UNITED STATES AS A COUNTRY OF MASS FIRST ASYLUM

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

OVERSIGHT ON THE LEGAL STATUS OF THE CUBANS AND HAITIANS WHO HAVE ENTERED THE UNITED STATES AND THE POLICIES AND PROCEDURES WHICH SHOULD BE ADOPTED IN ORDER TO HANDLE FUTURE MASS ASYLUM CASES AND CRISES

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UNITED STATES AS A COUNTRY OF MASS FIRST ASYLUM

FRIDAY, JULY 31, 1981

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:04 a.m., in room 2228, Dirksen Senate Office Building, Hon. Alan K. Simpson (chairman of the subcommittee) presiding.

Present: Senators Simpson, Grassley, Kennedy, and DeConcini.

OPENING STATEMENT OF HON. ALAN K. SIMPSON, U.S. SENATOR FROM THE STATE OF WYOMING, CHAIRMAN, SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

Senator SIMPSON. The hearing will come to order. Good morning to you.

If I look haggard and worn, it is only because I was asked to rise from my bed at dawn and appear on one of those early morning television programs. I know that Doris Meissner was also so subjected—her mistake was that she went. I was just leaving when the producer called saying, "Do not come, Simpson, the baseball strike has been settled."

So there may be some omen there: If you play ball, you will not get immigration reform. I will not go any deeper into that one.

Well, seldom has the United States been galvanized into more active thinking on immigration issues as it was last year by the influx of Cubans and Haitians into south Florida. This was the initial time that this country was to find itself as a country of mass first asylum, and it was soon evident that we had very little within our laws or in our administrative procedures or in our national preparedness plans to provide any clear direction on the handling of this extraordinary situation.

The citizens and the social services of Florida were overwhelmed by the sheer numbers of Cubans and Haitians arriving on their shores. That State continues to feel that tremendous impact to this day. Of the 133,000 persons who arrived last year many have remained in Florida. Moreover, the problem of new arrivals has not lessened. Since October 10, 1980, over 8,500 Haitians have come to our shores.

We still have 900 Cubans at Fort Chaffee who have been labeled as "difficult to resettle," whatever connotation you wish to place there, and 1,800 Cubans with criminal records at the Federal penitentiary in Atlanta. The cost to the Federal Government has risen

to $175 million, and that does not include the costs expended by States and localities, voluntary agencies and organizations, and private individuals. That figure, $175 million, would be almost 50 percent of the total annual budget of the Immigration and Naturalization Service, a startling figure.

So during the course of the hearings, we shall seek to resolve two basic issues: First, the legal status of the Cubans and Haitians who have entered the United States; and second, the policies and procedures which should be adopted in order to handle future mass asylum cases and crises.

And one valid reason why the status of Cubans and Haitians has not yet been determined—1 year after their entry—is the complex and ponderous nature of asylum proceedings and adjudications and the appeals process. Current law provides that the asylee status be determined on an individual case-by-case basis and decisions can then be appealed up to 5 levels, and three of those are de novo levels of proceedings.

There are 44 immigration judges in the Nation and 2 of them are in Florida. In addition to the Cuban and Haitian cases, over 58,000 other individuals, most of whom initially entered the United States illegally, have also applied for asylum. Under current law any person, regardless of legal status, once in the United States may apply for asylum.

The obviously unworkable nature of current adjudication procedures guarantees that these people remain in the United States for 1½ to 2 years before their cases are even reviewed, and for an indefinite period beyond that if the cases are appealed during that time. During that time they are granted the right to work, and in the case of Cubans and Haitians, the right to receive cash and medical assistance at the expense of the Federal Government.

Clearly then, we need to reform present adjudicatory procedures, exclusion and deportation proceedings, in order to provide for a speedy determination of status. In this manner, legitimate asylum claims can be expedited, while the frivolous claims are denied and ineligible applicants deported.

During today's hearing, the subcommittee will also examine the options of detaining asylum applicants pending the resolution of their status; enforcing the law preventing U.S. citizens and permanent residents from transporting persons in illegal status to this country; interdiction on the high seas; the degree to which due process that is granted to asylum applicants should parallel the due process being granted to refugees being processed overseas; the role of foreign policy and international cooperation in mass asylum crises; and the contingency planning which must be implemented to address such situations in the future.

We are as a country a signing party to the 1968 United Nations Protocol Relating to the Status of Refugees, and therefore bound by that agreement to refrain from returning persons to a country where they will be persecuted. That does not mean, however, that the United States must accept for permanent resettlement each legitimate asylee who arrives on our shores.

Citizens of the United States are proud of our freedoms and of our generous tradition of offering haven to the persecuted of the world. And it is indeed unfortunate that so many peoples on our

planet reside in nations where standards of individual freedom do not match ours. Nevertheless, I firmly believe that the United States cannot and should not attempt to accept the sole responsibility for this tragedy by resettling all of those who leave their homelands bound for our shores.

So it is the responsibility of the Judiciary Committees of the House and the Senate to develop some clear and strong policies and procedures to assist in distinguishing between the legitimate and the frivolous asylum claims, and to insure that true refuge for legitimate asylees is provided equitably by all of the nations of the free world.

And with that, we will proceed. We will consolidate the first witnesses into one panel, representing the Reagan administration. We are very pleased and privileged to have four excellent witnesses: First, Thomas O. Enders, the Deputy Assistant Secretary of State for Inter-American Affairs; Doris Meissner, the Acting Commissioner of the Immigration and Naturalization Service; Philip N. Hawkes, the Director of the Office of Refugee Resettlement of the Department of Health and Human Services; and David Hiller, Special Assistant to the Attorney General.

And with that, we will appreciate very much hearing your testimony, Mr. Enders.

STATEMENT OF THOMAS O. ENDERS, ASSISTANT SECRETARY OF STATE FOR INTER-AMERICAN AFFAIRS

Mr. ENDERS. Thank you very much, Mr. Chairman. It is a pleasure to be here this morning to address the question of a mass movement of persons from Cuba and Haiti and to support the legislative proposals that the President is requesting.

If I could at the outset, I would like to distinguish between the foreign policy aspects of a large-scale migration from Cuba and a large-scale migration from a country such as Haiti. In the first case, we have seen that there is a possibility of a sudden massive outflow of tens of thousands of people in a very short period of time. That is something that can occur only in a totalitarian state, whereas it is true that the immigration of a few dozen or several hundreds of people perhaps on a sustained basis, but on the basis of individual choice, could occur from Haiti and conceivably from a number of other countries.

In one case we are dealing with a friendly government which is interested in enforcing its laws and respectful of the laws of its neighbors and wishes to cooperate with the United States in bringing illegal migration under control, and migration occurs as a result of individual decisions without the support or the sanction of the Government. In the other case, such as in the Mariel boatlift of last year, we had a deliberate decision by the Cuban Government to permit and in many cases to force the departure of large numbers of its citizens to the United States.

Several countries intervened, attempted to arrange, as did international agencies, for the safe and orderly departure of the people involved in the Mariel boatlift. Those requests were rejected or ignored.

Mrs. Meissner will be addressing the question of the domestic implications of such a large-scale migration, which in both cases

can be similar. But the foreign differences are so great that I think it is important to treat them separately.

THE 1980 CUBAN BOATLIFT

In the case of Cuba, we have a situation in which some 125,000 Cubans entered the United States in the middle of last year. It was an unprecedented event, as you have indicated, Mr. Chairman, the deliberate use of innocent human beings to impose political and economic costs on a neighboring country. By the end of this fiscal year we estimate that the Mariel boatlift will have cost the United States over $700 million.

I think it is quite clear that such a politically inspired exodus has little in common with the legitimate immigration and refugee issues. Rather, they are the ultimate, if you will, in manipulation, the exploitation of the suffering of oppressed people to commit an unfriendly act against another country.

We know that the Federal, State, and local governments were unprepared to deal with the Mariel boatlift of 1980. Although we estimate that between 1 and 2 million Cubans might like to leave the island, approximately 200,000 Cubans have been approved by Cuban authorities for emigration. Therefore, we must and we will be prepared to respond to any attempt by Castro to repeat last year's sudden exodus.

Mr. Chairman, I would like to make clear that we are not proposing, the administration is not proposing, a change in this country's traditional policy which you summarized in your remarks, welcoming individual refugees from persecuting and tyranny, whether from Cuba or from other repressive regimes. I would like to also underscore that we intend fully to carry out our obligations under the U.N. Protocol on the status of refugees and under the Refugee Act of 1980.

And of course, I do not need to remind members of this committee that a very clear and forceful definition of refugees was contained in that act, one that corresponds to the international convention which defines a refugee as a person who has a well-founded fear of persecution should he or she return to his or her homeland, persecution on the basis of religion or political beliefs or ethnic status or nationality.

However, although we cannot be sure there were not refugees among those that under this definition, important or essential to our policy, we cannot be sure that there were not refugees who came in the Mariel boatlift, most of the persons who came were truly not refugees.

They were persons who were not singled out in their own country for persecution. They were persons who were free and even forced to leave. There is no basis on which we have been able in general to establish that they were or would be the victims of persecution were they to be returned, and in point of fact in the course of processing applications for asylum so far no applicants contained in the Cuban boatlift have been granted asylum as refugees. That is not to say that it could not occur in the future, but this was a group of people that are essentially not refugees.

CONTINGENCY PLANNING TO AVOID ANOTHER CUBAN BOATLIFT

Mr. Chairman, there are four elements in our planning for another contingency of this kind. The first and the most important is that Castro, the Cuban leadership and the Cuban people must have no doubt, no uncertainty about the nature of our response should they attempt a new Mariel boatlift. If they believe that we are unprepared to handle an illegal immigration emergency, if they think that we are going to vacillate between attempting to stop the migration and then opening our arms to it, if they think that we will in the end simply welcome in the new arrivals and resettle them into American communities and accept full responsibility for it, then the temptation to deal us another blow of the kind they dealt us before will be very great.

The President, by asking the Congress to grant authority to declare an immigration emergency and take the actions necessary to respond to it, signals clearly his intention that there will be no mistaking of our intentions. I believe it is important, Mr. Chairman, that the Congress send the same signal in its action on the President's proposals.

The second element is that in our view it is vitally important to deny Castro the one means of transportation by which a massive flood of illegal migrants can be brought to this country—boats. The 1980 experience was made possible by American citizens and residents who took thousands of U.S.-registered boats to Cuba. Cuba has few boats that it can spare for any boatlift.

If U.S. residents do not take boats to Cuba, there can be no migration from Cuba on the scale of a Mariel. I am confident that they will not do so if the U.S. Government is clear that it disapproves, if it is clear that such action is illegal, if it is clear that boatowners will lose their boats and be subject to prosecution and heavy fines if they attempt to help a foreign government create an immigration emergency.

Again, adoption of the President's legislative proposals would have a major impact.

Third, Mr. Chairman, there are some boats in Cuba and some may reach the United States despite our best efforts. The Coast Guard and if necessary the Navy will be available to interdict on the high seas those vessels that we have reasonable cause to believe may be engaged in transporting illegal aliens to the United States in violation of our laws.

Cuba has also in the past made use of third country boats, and in the case of such third country vessels, interdiction of course will take place only with the prior consent of the flag state. The proposed legislation would facilitate our turning these vessels away from the United States before they have been able to unload their passengers on our territory.

Finally, for those Cubans and Haitians who do by one means or another arrive in the United States, our policy must be one of immediate detention and prompt exclusion of those found to be inadmissible to this country, and Mrs. Meissner will address that.

HAITIAN MIGRATION

Turning, Mr. Chairman, to the question of Haiti, but a different question, we face there a continuing problem. The illegal migrants from Haiti constitute a significant social and economic problem for the United States, and, of course, particularly for the State of Florida. There were over 20,000 of them last year, many of them coming in after very dangerous sea voyages in unseaworthy craft, having paid high sums to traffickers to be transported to the United States.

However, the Government of Haiti has assured us of its determination to enforce its own laws against illegal migration and its intention to cooperate with the United States to its maximum ability in joint efforts to halt this flow. We are actively engaged in both diplomatic and technical discussions with the Government of Haiti to determine how we can improve the cooperation between the two governments.

One thing that has become clear is that Haiti cannot do the job alone, without American assistance. The economic and security assistance requests for the next fiscal year are now before the Congress and they are essential to enable the Haitian Government to deal with the severely strained economy and to improve the capability of its coast guard to prevent the departure of small boats with illegal migrants.

The U.S. Coast Guard will be assisting the Haitian Government in attempting to avoid violation of U.S. immigration laws. Arrangements will be made for the expeditious screening and processing of any asylum requests at sea, so that aliens who are not legitimate candidates for asylum may be returned promptly to their country aboard the interdicted vessel.

We envisage that such interdiction would be done selectively and given maximum publicity in Haiti, with the cooperation of the Haitian Government, in order to have the maximum impact on would-be immigrants without entailing excessive expenditure or enforcement effort.

We intend this to be a selective effort, intended to deter and educate. We are not attempting to apply a blockade.

Mr. Chairman, in closing let me say that we are under no illusion about how difficult it will be to deter or if necessary interdict mass migration to the United States either from Haiti or from Cuba, should it be attempted once more.

But this administration, and we hope the country, is determined to do it and to employ the combination of new legal authorities, better organization, quicker reaction, diplomatic skill and determination which is required to do it. Thank you very much.

Senator SIMPSON. Thank you very much, Mr. Enders. That is most helpful and most important for us to consider.

[The prepared statement of Mr. Enders follows:]

PREPARED STATEMENT OF THOMAS O. ENDERS

Mr. Chairman:

I am pleased to appear this morning to discuss the international and foreign policy aspects of Cuban and Haitian migration, in the light of the new immigration policy announced by the President, and to support the legislative changes he is requesting. I would like at the outset to make clear that, although the domestic impact of migration from either country is much the same, the foreign policy significance is quite different.

Your Committee asked us to discuss the possibility of future mass migrations to the United States. Emigration of a few dozen or a few hundred people may occur from a number of foreign countries. A sudden, massive outflow of tens of thousands in a short period of time is likely only from a totalitarian state.

In other words, in one case we are dealing with a friendly government, the Government of Haiti, interested in enforcing its laws and respectful of the laws of its neighbors, and desirous of cooperating with the United States in bringing illegal migration under control. Migration occurs as the result of separate decisions by private individuals without the support or sanction of their government.

In the other case, in the Mariel boatlift of last year, we were faced by a deliberate decision of the Cuban Government to permit, and indeed in many instances to force, the departure of large numbers of its citizens for the United States. The offers of several countries to receive these Cubans and the efforts of international agencies to arrange a safe and orderly system of departure were rejected or ignored.

The steps we take to halt illegal migration to the United States, and to arrange the return of citizens of these countries who are not eligible for admission, will obviously be different in these two very different circumstances.

In the case of Haiti, we face a continuing, problem. Illegal migrants from Haiti constitute a significant social and economic problem for the United States particularly in the state of Florida. Over 20,000 Haitians entered the U.S. illegally in the last year, many of them in dangerous sea voyages in unseaworthy craft. However, the Government of Haiti has assured us of its determination to enforce its own laws against illegal migration and of its intention to cooperate with the United States, to the maximum extent of its ability, in joint efforts to halt the flow. We are actively engaged in both diplomatic and technical discussions with the Government of Haiti to determine how we may improve the cooperation of our two governments.

One thing that has become clear is that Haiti will not be able to do the job alone, without U.S. assistance. The economic and security assistance requests for FY 1982 that are now before the Congress will be essential to enable the Haitian Government to deal with a severely strained economy and to improve the capability of its Coast Guard to prevent the departure of small boats with illegal migrants.

In addition the U.S. Coast Guard will be assisting foreign governments that request such assistance to of attempting to violate U.S. immigration laws. Arrangements will be made for expeditious screening and processing of any asylum requests at sea so that aliens who are not legitimate candidates for asylum can be returned promptly to their country aboard interdicted vessels. We envision that such interdiction would be done selectively and given maximum publicity in Haiti, with the cooperation of the Haitian Government, in order to have maximum impact on intending migrants, without entailing excessive expenditure or enforcement effort.

Legislation to facilitate seizure and forfeiture of vessels bringing aliens to the U.S. in violation of U.S. laws would also assist greatly in dealing with Haitian migration. Indeed, the U.S. Government

technical team which visited Haiti last week observed that the traffic in migrants is now highly organized, using sizeable ships. Confiscation of these ships once they have been seized would be a powerful deterrent against those who are cynically profiting from the traffic in Haitian migrants.

Let me now turn to the very different case of Cuba.

Some 125,000 Cubans entered the United States between April 21 and September 26, 1980. This was an unprecedented event -- the deliberate use of innocent human beings to impose political and economic costs on a neighboring country. By the end of this fiscal year, it is estimated that the Mariel boatlift will have cost the United States over $700 million. Such politically-inspired exoduses have little in common with legitimate immigration and refugee issues; rather, they are the ultimate in manipulation, exploiting the suffering of an oppressed people to commit an unfriendly act against another country.

Federal, state and local governments were unprepared to deal with the Mariel boatlift of 1980. Although we estimate that between one and two million Cubans would like to leave the island, approximately 200,000 Cubans have been approved by Cuban authorities for emigration. We must and we will be prepared to respond to any attempt by Castro to repeat last year's sudden exodus.

Let me make clear that we propose no change in this country's traditional policy of welcoming individual refugees from persecution and tyranny, whether from Cuba or other repressive regimes. But our experience of last year amply proved that we simply cannot respond in the same way when we are faced with a sudden influx of tens of thousands, including the inmates of jails and asylums.

There are four key elements in our planning for any contingency of this kind.

First, Castro, and the Cuban people, must be in no doubt or uncertainty about the nature of our response to a new Mariel. If they believe we are unprepared to handle an illegal immigration emergency; if they believe we will vaccilate between attempting to stop the migration and welcoming it; if they believe we will in the end welcome the arrivals and resettle them in American communities, then the temptation to deal us another blow will be very great. The President, by asking Congress for the authority to declare an immigration emergency and to take the actions necessary to respond to it, has clearly signalled his determination that there be no mistaking of our intentions. It is important that the Congress send the same signal in its action on the President's legislative proposals.

Second, it is vitally important to deny Castro the one means of transportation by which a massive flood of illegal migrants can be brought to this country: boats. The 1980 experience was made possible by the U.S. citizens and residents who took thousands of U.S.-registered boats to Cuba. Cuba has few boats it could spare for a new boatlift. If U.S. residents do not take boats to Cuba, there can be no migration from Cuba on the scale of Mariel. I am confident they will not do so if the U.S. Government is clear that it disapproves, if it is clear that such action is illegal, and if it is clear that boatowners will lose their boats and be subject to prosecution and heavy fines if they attempt to help a foreign government create an immigration emergency. Again, adoption of the President's legislative proposals would have a major impact.

Third, there are some boats in Cuba, and some may reach there from the U.S. despite our best efforts. The Coast Guard with support from the Navy if necessary, would be available to interdict on the high seas those vessels that we have reasonable cause to believe may be engaged in transporting illegal aliens to the United States in violation of our laws. Cuba has also in the past made use of third-country flag vessels to carry

migrants. In the case of third country vessels, interdiction would of course take place only with the prior consent of the flag state. The proposed legislation would facilitate our turning these vessels away from the United States, before they have been able to unload their passengers on our territory, and turning them back toward their port of departure or another point outside of the U.S.

Fourth, for those Cubans and Haitians who do, by one means or another, arrive in the U.S., our policy must be one of immediate detention and prompt exclusion of those found to be inadmissable to this country. to do otherwise is to encourage others to follow.

These four are the elements of a successful policy to prevent new massive influxes of illegal aliens: a clear Administration and Congressional rejection of illegal immigration; seizure and forfeiture of vessels used for illegal boatlifts; interdiction of illegal boatlifts on the high seas; and detention and exclusion of those who arrive by that means.

These are not, of course, cost-free policies. Effective interdiction, whether of the continuing Haitian boatlift or a potential Cuban one, means additional operating costs for the Coast Guard. Expedited exclusion proceedings require additional manpower. Detention of the continuing flow of illegal migrants, plus prudent preparation for any sudden increase, requires, as the Attorney General said yesterday, "additional resources for the construction of permanent facilities." The Administration will ask your approval of the resources needed, and I hope that your Committee will support our request.

I do not wish to convey the impression that discouraging Cuba from the temptation of unleashing a

new human wave against this country, or stopping it once it is started, will be easy tasks for which we have found a simple formula. On the contrary, they will require difficult and delicate balances of diplomatic pressures, effective law enforcement actions, and well-coordinated federal, state and local policies. A clear consensus of Congressional and public opinion in support of this approach will be indispensable if it is to succeed.

President Reagan, in his statement, quoted the report of the bipartisan Select Commission that Mariel "brought home to most Americans the fact that United States immigration policy was out of control." The Administration's proposals are designed to bring coherence and control back into our policy and to ensure respect for our laws both at home and abroad. We will well serve our foreign policy objectives by doing so.

Senator SIMPSON. The next member of the panel, Doris Meissner. Thank you.

STATEMENT OF DORIS MEISSNER, ACTING COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE

Ms. MEISSNER. Thank you, Mr. Chairman.

Yesterday the Attorney General outlined the President's proposals regarding a wide range of immigration and refugee issues. Our testimony today treats one aspect of those issues, the issue of mass arrivals of undocumented aliens.

Historically, persons desiring to emigrate to the United States, including refugees, have been screened and processed overseas. Thus the majority of individuals who arrived on our shores had been adjudged eligible for admission prior to arrival. Applications for asylum by persons already in the United States had been, in the past, relatively few in number and had been cases generally clear-cut in nature.

This picture has changed dramatically. Because we have suddenly become a country of first asylum, our policies and procedures, which have been generous and deliberate, have proven inadequate to deal with these overwhelming numbers.

We seek solutions which will prevent the recurrence of a Mariel-type flotilla, which will deter the continuing arrival of illegal undocumented aliens to our shores, and which will deal with the large numbers of recently arrived, undocumented Cubans and Haitians who are already here.

The administration is proposing a seven part program:

One, legislation to reform and streamline asylum and exclusion procedures;

Two, legislation to strengthen our civil and criminal sanctions against the bringing of undocumented aliens to the country;

Three, legislation to strengthen statutory authority for the President to direct interdiction at sea of vessels suspected of attempting to violate U.S. immigration laws;

Four, legislation to vest the President with special authority in a declared immigration emergency;

Five, resources for the development of additional facilities to be used for temporary detention of illegal aliens pending their exclusion or grant of asylum;

Six, international measures which address the problem of mass immigration and asylum;

Seven and last, legislation to regularize the status of the Cubans and Haitians who arrived and were known to INS prior to January 1, 1981.

I will briefly discuss several of the elements of this program. First, the reform of asylum and exclusion procedures. Our current immigration laws, including the Refugee Act of 1980, do not adequately address the problems caused when uninvited aliens arrive in large numbers. The law currently provides that every alien, except a crewman, stowaway, or a national security risk, who arrives in the United States is entitled to a full evidentiary hearing before a quasi-judicial officer of the Immigration and Naturalization Service, in order to determine his right to enter this country. This right to a hearing is the same for an alien who arrives with absolutely no documentation, as part of a mass migration, as it is for an individual who arrives with a visa.

At the exclusion hearing, the alien is entitled to be represented by counsel, at no expense to the Government, and can appeal findings of excludability to the Board of Immigration Appeals. Thereafter, judicial review of the exclusion hearing can be sought in a U.S. District Court through a writ of habeas corpus, and ultimately in a U.S. Court of Appeals and even in rare instances in the Supreme Court.

This entire process can take many months, sometimes years, to complete, even in cases where the alien's claim to enter is entirely without merit. Additionally, injunctions, which have been granted by district courts in the past, can keep all individual case hearings from being held, sometimes for years, while procedural disputes are litigated.

Each alien arriving in the United States also has a statutory right to apply for asylum if he has a claimed fear of persecution in his home country. Such applications are considered on a case-by-case basis. Under current regulations, an alien may apply for asylum to a district director of the Immigration and Naturalization Service. Each application for asylum made to an INS district director is forwarded to the Department of State for an individual advisory opinion before being adjudicated by the INS.

An alien may also initially submit the application to the INS hearing officer during the course of an exclusion hearing, or he may resubmit during the course of the hearing, an application previously denied by the district director.

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This adjudication process is torturously slow. As a result, INS detention facilities for arriving aliens are filled to overflowing long before final individual case adjudications can be made. This has required that some individuals be released and resettled into the community, with authorization to accept employment and entitlement to assistance under Government funded programs.

A great burden is placed upon the State and local governments, which must attempt to integrate these individuals into the communities. Once individuals are resettled into the community, the likelihood of their eventual removal if they are not found to be entitled to remain here diminishes. At the same time, the liberal policy of resettlement and work authorization encourages more undocumented aliens to come to the United States.

As part of its plan to meet this problem, the administration proposes legislation to reform these procedures. Aliens arriving in the United States without any documentation will have their admissibility determined administratively by immigration officers. The procedure would resemble that currently used for determining the admissibility of crewmen, stowaways, and potential national security risks.

Full adversary hearings, with right to counsel, administrative appeals, and judicial review, would be retained for those cases in which there is some documentary claim to enter, and in which context an adversary hearing could be expected to serve a useful purpose in resolving disputed factual or legal issues.

Adjudications of asylum claims will be separated from the exclusion hearing process. Asylum applications will be adjudicated by asylum officers which will be established within the INS. These officers will be career professionals with extensive training in domestic and international law and conditions in foreign countries. They would work closely with international organizations with expertise in refugee and asylum matters.

Decisions by the asylum officer would be administratively final, with a discretionary certification to the Commissioner of Immigration Service or the Attorney General only in unusual cases. Judicial review of asylum decisions would be available only as part of the judicial review of final orders of exclusion and deportation. There would be no judicial review of asylum denials of cases of undocumented aliens subject to exclusion, just as there is presently no review of refugee or immigrant admissions and denials by Government officials abroad.

In addition, the period for filing a petition to review a deportation order in the court of appeals would be shortened from the current 6 months to 30 days, to inhibit the use of judicial review as a delaying tactic.

The next element of the proposal that I would like to turn to is the emergency immigration legislation. Legislation is needed to confer upon the President special authority to enable him to deal with an immigration emergency such as the 1980 Cuban flotilla.

Under such emergency legislation, the President would be authorized to declare an emergency when a substantial number of undocumented aliens have or are about to embark for the United States and special authority to deal with the situation as required. The Presidential action would trigger emergency measures, includ-

ing prohibiting U.S. vessels and residents from traveling to designated foreign countries for the purpose of transporting illegal aliens to the United States.

It would direct Federal agencies to establish holding centers and take other necessary actions, and expend funds for these purposes from a newly established emergency fund of $35 million.

The next element is resources for detention facilities. As I stated earlier, a policy of resettlement and work authorization of undocumented aliens pending the determination of their claims encourages the illegal migrant flow. It has become clear that the current policy of limited detention and release into the community, which we have forced to follow due to overwhelming numbers, has actually aggravated our problems.

Many aliens claiming asylum who are released abscond before their status can finally be determined. Attempting to locate such aliens results in an inordinate expenditure of time and money with limited success. Their release, in addition, places great strains upon the communities in which they tend to congregate.

The administration therefore in the future will detain undocumented aliens arriving in the United States who do not choose to depart voluntarily or who do not have prima facie claims for asylum or legal immigration status.

The last item is the legalization of the Cubans and Haitians who are presently in the United States. This item will be discussed more fully by Mr. Hawkes. However, it entails legislation to permit the regularization of the Cubans and Haitians who were in this country and known to the Immigration Service before January of 1981. It recognizes the practical difficulties of adjudicating the approximately 160,000 claims now pending before the Government.

The legalization would be undertaken in conjunction with previously described strong prevention measures designed to preclude the recurrence of such situations. The legalization proposal will offer recent Cuban and Haitian arrivals an exceptional opportunity for full integration into our society. At the same time, by strengthening our enforcement legal tools, the circumstances that resulted in the need for such a proposal should not recur.

Senator SIMPSON. Thank you very much.

[The prepared statement of Doris M. Meissner follows:]

Prepared Statement of Doris M. Meissner

Mr. Chairman, members of the Sub-committee, I am pleased to be here today to present the Administration's views on mass asylum. I commend you for scheduling these timely hearings on what is certainly one of the most difficult and important issues facing our country. I also wish to acknowledge the fine work which has been done by this committee, by the House Judiciary Committee, and by the Select Commission on Immigration and Refugee Policy, of which you, Mr. Chairman, and Senators Mathias, Kennedy, and DeConcini served as members, in grappling with these difficult issues. The Administration's Interagency Task Force on Immigration and Refugee Policy drew heavily on your previous work in formulating its policy recommendations to the President. Yesterday you heard Attorney General William French Smith describe the Presidential proposals regarding the wide range of immigration and refugee issues. My testimony today treats one aspect of those initiatives: the issue of mass arrivals of undocumented aliens.

Historically, persons desiring to emmigrate to the United States, including refugees, have been screened and processed overseas. Thus the overwhelming majority of individuals who arrived on our shores had been adjudged eligible for admission prior to arrival. Applications for asylum by persons already in the United State had been, in the past, relatively few in number and had been cases generally clear-cut in nature.

This picture has changed dramatically. Beginning with the Haitian influx in the mid-1970's and the outpouring of Cubans from Mariel harbor one year ago, there are now as many as 160,000 persons in the United States whose arrival has been unauthorized and who seek permanent asylum in this country as refugees fleeing political persecution. Because we have suddenly become a country of first asylum, our policies and procedures, which have been generous and deliberate, have proven inadequate to deal with these overwhelming numbers.

Last year 125,000 Cubans arrived on the shores of southern Florida from the port at Mariel. The vast majority of these people have been resettled, but approximately 1,800 persons with cirminal pasts or disciplinary problems remain in detention in the

federal penitentiary in Atlanta, and 740 mentally and emotionally ill and maladjusted remain at Fort Chaffee, Arkansas.

In addition, there has been a steady flow of from 600 to 1,500 undocumented alien arriving by sea from Haiti and elsewhere each month. While those Haitians not entitled to remain in this country would be accepted back in Haiti, our attempts to process them through exclusion proceedings have consistently been blocked by court proceedings challenging Immigration and Naturalization Service procedures.

Thus, solutions must be found which will prevent the recurrence of a Mariel-type flotilla; which will deter the continuing arrival of illegal undocumented alien to our shores; and which will deal with the large numbers of recently arrived, undocumented Cubans and Haitians who are already here.

To meet these challenges, the Administration is proposing a seven part program:

1. We will propose legislation to reform and streamline asylum and exclusion procedures.

2. We will seek legislation to strengthen our civil and criminal sanctions against the bringing of undocumented aliens to this country.

3. We will seek statutory authority for the President to direct interdiction at sea of vessels suspected of attempting to violate U.S. immigration laws.

4. We will propose legislation to vest the President with special authority in a declared immigration emergency.

5. We will request the needed resources for the development of additional facilities to be used for temporary detention of illegal aliens pending their exclusion or grant of asylum.

6. We will pursue international measures which address the problem of mass immigration and asylum.

7. We will submit legislation to regularize the status of the Cubans and Haitians who arrived and were known to INS prior to January 1, 1981.

1. Reform of Asylum and Exclusion Procedures

Our current immigration laws, including the Refugee Act of 1980, do not adequately address the problems caused when uninvited aliens arrive in large numbers. The law currently provides that every alien, except a crewman, a stowaway, or a national security risk, who arrives in the United States is entitled to a full evidentiary hearing before a quasi-judicial officer of the Immigration and Naturalization Service, in order to determine his right to enter this country. This right to a hearing is the same for an alien who arrives with absolutely no documentation, as part of a mass migration, as it is for an individual who arrives with a visa.

At the exclusion hearing, the alien is entitled to be represented by counsel, at no expense to the government, and can appeal findings of excludability to the Board of Immigration Appeals in Washington, D.C. Thereafter, judicial review of the exclusion hearing can be sought in a United States District Court through a writ of habeas corpus, and ultimatley in a United States Court of Appeals and even in rare instances in the Supreme Court. This entire process can take many months, sometimes years, to complete, even in cases where the alien's claim to enter is entirely without merit. Additionally, injunctions, which have been granted by district courts in the past, can keep all individual case hearings from being held, sometimes for years, while procedural disputes are litigated.

Each alien arriving in the United States also has a statutory right to apply for asylum if he has a claimed fear of persecution in his home country. Such applications are considered on a case by case basis. Under current regulations, an alien may apply for asylum to a district director of the Immigration and Naturalization Service. Each application for asylum made to an INS district director is forwarded to the Department of State for an individual advisory opinion before being adjudicated by the INS.

An alien may also initially submit the application to the INS hearing officer during the course of an exclusion hearing, or he may resubmit during the course of the hearing, an application previously denied by the district director.

The consequences of this torturously slow adjudication process have been disastrous. INS detention facilities for arriving aliens are filled to overflowing long before final individual case adjudications can be made. This has required that some individual be released and resettled into the community, with authorization to accept employment and entitlement to assistance under government funded programs. A great burden is placed upon the state and local governments which must attempt to integrate these individuals into the communities. Once individuals are resettled into the community, the likelihood of their eventual removal if they are not found to be entitled to remain here diminishes. At the same time, the liberal policy of resettlement and work authorization of undocumented arrivals encourages more undocumented aliens to come to the United States.

As part of its plan to meet this problem, the Administration will propose legislation to reform and expedite exclusion procedures. Aliens arriving in the United States without any documentation will have their admissibility determined administratively by immigration officers. The procedure will resemble that currently used for determining the admissibility of crewmen, stowaways, and potential national security risks. Full adversary hearings, with right to counsel, administrative appeals, and judicial review, will be retained for those cases in which there is some documentary claim to enter, and in which context an adversary hearing can be expected to serve a useful purpose in resolving disputed factual or legal issues.

Adjudications of asylum claims will be separated from the exclusion hearing process. Asylum applications will be adjudicated by a new cadre of asylum officers which will be established within the INS. These officers will be career professionals with extensive training in domestic and international law and conditions in foreign countries. They will work closely with international organizations with expertise in refugee and asylum matters.

Decisions by the asylum officer would be administratively final, with a discretionary certification to the Commissioner of INS or the Attorney General only in unusual cases. Judicial review of asylum decisions would be available only as part of the judicial review of final orders of exclusion or deportation. There would be no judicial review of asylum denials of cases of undocumented alien subject to exclusion. In addition, the period for filing a petition to review a deportation order in the Court of Appeals would be shortened from the current six months to 30 days in order to inhibit the use of judicial review as a delaying tactic .

The procedures we propose would result in both fair and efficient adjudication of admissibility and asylum claims. Individuals with valid claims would receive timely relief, while those whose claims lack merit would be prevented from subverting immigration processing through procedural delays. Under the conditions we currently face, such streamlined procedures are absolutely essential if we are to protect the integrity of our immigration system and preserve the framework that Congress has established to govern the inspection and admission of persons seeking asylum.

2. Strengthening of the Laws Against Bringing Undocumented Aliens to the U.S.

The Administration will seek legislation to strengthen our criminal laws against the bringing of undocumented aliens into this country and our civil laws concerning the seizure and forfeiture of vessels used to bring in such illegal arrivals. The participation of American residents in the Cuban flotilla of 1980 and the decision of the court in U.S. v. Anaya, 509 F.Supp. 289 (S.D. Fla. 1980), demonstrate the need for such new authority.

In Anaya, the court held that the present criminal statute covers only surreptitious entries and does not apply where illegal aliens are presented to INS for inspection as were most of the Cubans who arrived last year. This law must be clarified to insure that any such loophole is securely closed.

Moreover, our experience, both during the Cuban flotilla and with the current continuing traffic from Haiti, has shown that many of the vessels that bring illegal aliens are used repeatedly for this purpose. The government must be given improved tools to effect the forfeiture and seizure of these vessels in order to remove them from the illegal trade. The legislation we will propose will strengthen the law respecting forfeiture and seizure of such vessels so that they can be more effectively used.

3. Authority to Interdict Vessels Attempting to Violate U.S. Law

We will seek explicit statutory authority for the President to direct the Coast Guard to interdict U.S. and unregistered vessels when there is a reasonable suspicion that they are attempting to violate U.S. immigration laws. This authority would also extend to foreign flag vessels on the high seas when the permission of the foreign government has been obtained by assisting the entry of undocumented aliens.

Vessels travelling to the U.S. with undocumented aliens on board could be escorted to a U.S. port where their occupants would be taken into custody, or they could be required to return to their port of departure. In the latter case, procedures would be established to comply with our international obligations relating to refugees and the granting of asylum.

We believe that such explicit authority to interdict is a necessary component of any realistic plan intended to deter mass illegal migration for the Carribean.

4. Immigration Emergency Legislation

Legislation is needed to confer upon the President special authority to enable him to deal with an immigration emergency.

The need for such legislation became apparent as a result of the 1980 Cuban flotilla, during which the United States was unable to restrain the mass migration of thousands of Cubans. The legislation we will propose will enable the federal government to respond more efffectively to future mass migrations. Under this legislation, the President would be authorized to declare an immigration emergency when a substantial number of undocumented aliens are about to embark or have embarked for the U.S. and special authority to deal with the situation is required. The President would then be able to take emergency action including prohibiting U.S. vessels and residents from travelling to designated foreign countries for the purpose of transporting illegal alien to the U.S.; directing federal agencies to establish holding centers and take other necessary actions; and expending funds for these purposes from a newly established emergency fund of 35 million. Funding and authorization for this fund will be requested once the emergency authority is enacted.

These provisions will help law enforcement authorities prevent a recurrence of a Mariel-type boatlift by allowing them to prevent the departure of vessels suspected of travelling to the designated country involved for the purpose of bringing illegal aliens back to the U.S. The Cuban flotilla demonstrated that persons living in the United States could become significant participants in a mass migration by providing the means of transportation for the alien seeking to enter the United States.

The legislation will also enable government authorities to deal effectively with those aliens who do reach our shores. The Attorney General would be authorized to promulgate emergency regulations to expedite the exclusion and asylum process. As I stated earlier, the Administration is also seeking separate, permanent legislation which would streamline the exclusion and asylum procedures. In addition, the Ad-

ministration has prepared a contingency plan detailing the responsibilities of relevant government agencies in the event of an immigration emergency. These measures will enable the government to take immediate and effective action in such a event.

5. Resources for Detention Facilities

As I stated earlier, a policy of resettlement and work authorization of undocumented aliens pending the determination of their claims to enter this country, encourages the illegal migrant flow. It has become clear that the current policy of limited detention and release into the community, which we have been forced to follow due to overwhelming numbers, slow judicial procedures, and overcrowded detention facilities, has actually aggravated our problems. Many undocumented aliens claiming asylum who are released abscond before their status can finally be determined. Attempting to locate such aliens results in an inordinate expediture of time and money by the Immigration and Naturalization Service with limited success. Their release, in addition, places great strains on the particular communities in which they tend to congregate. Moreover, the release of those who arrive en masse by sea is inconsistent with the manner in which we have long treated undocumented aliens who arrive over our land borders or by air.

Therefore, in the future, undocumented aliens arriving in the United States who do not choose to depart voluntarily will be placed in administrative detention pending the determination of their admissibility. The only exceptions will be those who have prima facie claims for asylum or legal immigration status, or who have close relatives residing legally in the United States. The Administration is currently studying alternative sites for the expansion of INS detention capabilities. In order to carry out this policy, the Administration will seek additional resources for the construction of permanent facilities in which to house undocumented aliens temporarily pending the determination of their eligibility.

6. International Measures

The Administration will also pursue international measures which will address the problem of mass asylum. We will continue efforts to secure the return to Cuba of those Cubans who are currently detained in Fort Chaffee, Arkansas, the Atlanta

Federal Penitentiary and other facilities, and who are excludable under U.S. laws. We will explore with other nations in the Western Hemisphere the availability of additional resettlement opportunities for Haitians and we will seek to increase cooperation with the government of Haiti in restraining illegal immigration from Haiti to the United States.

7. Legislation to Legalize Status

The Administration will propose legislation which will permit the legalization of the status of Cubans and Haitians who were in this country and known to INS before January 1, 1981. This proposal recognizes the practical difficulties of adjudicating the cases of aporoximately 160,000 Cubans and Haitians with asylum claims now pending or otherwise in proceedings before the Immigration and Naturalization Service, as well as the humanitarian problem inherent in any attempt to remove aliens who have been resettled into communities with government assistance. The legalization would be undertaken in conjunction with the previously described, strong prevention measures designed to preclude the recurrence of such circumstances.

Cubans who were paroled into the United States between April 20, 1980 and December 31, 1980, and Haitians who were in INS proceedings on December 31, 1980 will be permitted to apply for a "renewable term temporary resident" status. Cubans with criminal backgrounds and other problems who are now held in detention will be ineligible for the program, and will continue to be held in detention while their return to Cuba is sought.

The proposed legislation would confer eligibility to work, travel, and receive certain benefits available to aliens who are in the United States "under color of law." The status could be renewed after three years. After five years of continuous residence in the United States, such Cubans and Haitians could apply for permanent residence status which eventually could lead to citizenship. To receive permanent resident status, they would have to demonstrate compliance with the substantive requirements of the immigration laws. Economic self-sufficiency, no substantive grounds for exclusion, and a minimal ability to speak the English language would be a prerequisite to such adjustment.

The legalization proposal will offer recent Cuban and Haitian arrivals an exceptional opportunity for full integration into our society. At the same time, by strengthening our enforcement legal tools, the circumstances that resulted in the need for such a proposal should not recur.

The seven Administration proposals which I have outlined promise to give us the means to prevent and control any future mass asylum or other immigration emergencies, as well as a basis for dealing with the legacy of such past emergencies and the authority to provide for fair, and expeditious and reasonable processing of asylum claims.

I would be glad to respond to any questions you may have about these initiatives.

Mr. Hawkes, if you please proceed. Could you please summarize your remarks within a period of 5 to 10 minutes.

Mr. HAWKES. Yes, Mr. Chairman.

Senator SIMPSON. Thank you very much.

STATEMENT OF PHILLIP N. HAWKES, DIRECTOR, OFFICE OF REFUGEE RESETTLEMENT, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. HAWKES. Members of the committee, Mr. Chairman, I am pleased to have the opportunity today to discuss the role that the Department of Health and Human Services has played in the wake of the massive influx of Cuban and Haitian entrants.

Over 150,000 Cubans and Haitians have arrived in the United States since April 1980. As you remember, thousands of Cubans arrived daily during the Mariel boatlift in April, May, and June 1980, having an impact on both the States in which they are now living and on the Federal agencies involved in the processing, care, and initial placement or resettlement of the arrivals. Coupled with the influx of Cubans, several thousand Haitians also arrived in the U.S. during the last year.

This extraordinary burden caused the previous administration to declare the situation an emergency on May 6, 1980, and the Federal Emergency Management Agency began to coordinate the Federal effort to respond to the crisis. Working with FEMA, Federal agencies, including Defense, Justice, GSA, State, Interior, and HHS, assisted in the reception, processing, and initial placement or resettlement of the new arrivals. The Department of Defense activated military bases to house the arrivals while medical and security screenings were made and community sponsors located.

The Cubans and Haitians do not have refugee status. Provisions included in the Refugee Education Assistance Act enacted on October 10, 1980, however, authorizes domestic assistance for the new entrants and reimbursement for the States. The act authorizes the Federal Government to reimburse the States for up to 100 percent of their costs in providing cash, and medical assistance, and social services to Cuban and Haitian entrants.

Section 501 of the Refugee Education Assistance Act also authorizes the provision of numerous other forms of assistance to Cuban and Haitian entrants by Federal agencies. Under this authority,

HHS established the Cuban/Haitian entrant program in October 1980; 32 States have chosen to participate in this program, which provides Federal funding for assistance and services following the same policies as apply to the refugee program.

At present, HHS retains responsibility for coordinating and providing assistance to Cuban entrants at various locations such as Fort Chaffee, Ark., and the Federal Correction Institution in Atlanta, Ga. An important aspect of this assistance is the arrangement of initial placements or resettlements with community-based sponsors.

Only 740 Cuban entrants remain at Fort Chaffee. Many of these entrants pose mutual placement or resettlement difficulties because of health or behavioral problems. We are proceeding carefully yet as expeditiously as possible with these cases. Many of the Cubans at the FCI in Atlanta have been detained by INS on criminal grounds and are not eligible for placement into local communities.

Thank you for this opportunity to address the subcommittee. I am prepared to answer any questions.

Senator SIMPSON. Thank you very much, Mr. Hawkes.

And if you please, David Hiller.

STATEMENT OF DAVID HILLER, SPECIAL ASSISTANT TO THE ATTORNEY GENERAL

Mr. HILLER. Mr. Chairman, thank you.

I have not prepared a statement. I would be glad to answer any questions you might have.

Senator SIMPSON. Fine. I know of your great interest in this issue and you have been most helpful, as all of you have been, with regard to the subcommittees of both the House and the Senate.

The ranking member of the subcommittee is here. Would you care to have any remarks?

Senator KENNEDY. No, Mr. Chairman. I have no comment at this time. I will have some questions.

Senator SIMPSON. Fine.

I want to say again that Senator Kennedy's interest in this issue has been so very clear for many years. He indeed has been of great assistance to me, as the new chairman of the subcommittee. He chaired this subcommittee for some years in the U.S. Senate. And his interest is very real and very authentic.

INTERDICTION

Well, I have several questions. Can the Coast Guard and the Navy—I guess I would ask this of Mr. Enders—begin now to interdict boats on the high seas, or will this necessitate legislative changes? I know interdiction is part of existing statutes, but is the type of interdiction you are proposing going to require legislation or can that be implemented administratively?

Mr. ENDERS. Mr. Chairman, we believe there is authority for an interdiction program, for example, with regard to Haitian migration, to be undertaken in the near future. And we propose to go ahead and do that.

However, we feel very strongly that these authorities should be strengthened, and clarified, and made completely unassailable, and that is the purpose of the legislative proposals you have before you.

Senator SIMPSON. But in the near future? Can you give me a better definition of that as to when that may be implemented? Is that something that we can count on rather immediately?

Mr. ENDERS. We have just begun discussions with the Haitian Government. Interdiction, of course, would be with their permission and with their cooperation. Once we have worked out a basis of cooperation, we would plan to start the program. We hope that that will be, as I said, in the very near future.

But the limiting factor is not the availability of legal authority, but the need to reach a full agreement with this friendly country.

ASSESSMENT OF THE LIKELIHOOD OF ANOTHER CUBAN BOATLIFT

Senator SIMPSON. I see. Based upon your assessment of general conditions in the Western Hemisphere, how well can you gage the likelihood of another such mass asylum crisis occurring in the near future?

Mr. ENDERS. Well, of course, a really large-scale crisis could only occur as a result of an organized manipulation of the kind that the Cuban Government undertook last year. We believe that there are some indicators that suggest when that is imminent.

You recall last year that what happened was that a rising discontent in Cuba, the seizure of an Embassy, the beginnings of some unauthorized emigration, provided the trigger which the Cuban Government then used to see whether it could turn this growing unrest within Cuba, turbulence within Cuba, into a political victory and in fact a political weapon against the United States by directing large numbers of people toward Florida.

I think that we would pick up very quickly either the beginnings of turbulence of this kind within Cuba or the start of an organization of a large-scale migration toward Cuba—toward Florida. That would require, of course, communication with the Cuban-American community in Florida. It would require encouragement to Americans to begin bringing their boats down.

Both I think we could pick up quite easily. And it is impossible to say how likely that is, Mr. Chairman, because I think the likelihood of that depends not so much on an analysis of what might happen in the future as the assertion of our national will to prevent it.

In other cases, let me say that I do not anticipate that we will face large-scale individual migrations of the kind that we now have from Haiti in the immediate future. But they cannot be ruled out for the future.

STATUS OF HAITIAN MIGRANTS

Senator SIMPSON. Let me ask you, what is the current State Department advisory opinion regarding Haitians as victims of persecution under the statute, victims of persecution on the basis of race, religion, and political opinions? What is that present advisory opinion, not only for Haitians and for El Salvadorans and for Nicaraguans?

Mr. ENDERS. Most of the Haitians that are coming are people who have migrated from the countryside to the cities, have worked there for some time in factories, and then have in fact moved on up the chain. Although we cannot exclude the possibility that there are some refugees, in the proper sense of the word, among persons who are fleeing persecution, and would wish to take adequate precaution to make sure that anybody who made that claim could be heard, we think that the overwhelming numbers of these persons are economic migrants.

Senator SIMPSON. Let me ask a question of the Health and Human Services representative, Mr. Hawkes. To what extent are the voluntary agencies and the private organizations who receive resettlement contracts for Cubans and Haitians, to what extent are they monitored by the ORR?

Mr. HAWKES. First of all, Mr. Chairman, we receive proposals for the placement of these people. Each is reviewed carefully before making awards. Our review process includes not only in-house HHS personnel, but community experts as well. We also look for community support for such placements.

Once an award has been made both our regional offices and our central office monitor each project to insure that the conditions of the original proposal are met.

Senator SIMPSON. What we find in our investigations is that often the sponsor is a family member who may be newly arrived in the United States and unable really to provide the proper sponsorship that I think was intended by the Congress and the regulations. The intention was that sponsors should be people of some stability, not only financially but with some ability to assist those people to become part of their community. And now we find that many of these sponsors are simply people who just got there a month ahead of the refugees.

What is your commentary with regard to this situation? Do you think sponsors of asylees and applicants for asylum should be more legally responsible in some way? Where are we with that?

Mr. HAWKES. There are sponsorship breakdowns along the lines that you have mentioned. In an effort to minimize these breakdowns, we must have better orientation for the sponsor as to what is involved in sponsorship.

I think if the sponsorship of refugees required a legal responsibility, or if a financial responsibility were presumed it would be very hard to find sponsors. And without sponsors, I am not sure how this program would work.

Senator SIMPSON. I had the feeling that would be the response. It is clear that we need some balance in the sponsorship process short of a total legal responsibility and we will be probing that.

I have one question for Ms. Meissner. The proposed legislation calls for Cubans and Haitians to apply for a renewable term-entry card, which would be rolled over every 3 years, followed by an adjustment of status to permanent residence after 5 years. Now, this means that a group of approximately 135,000 would be adjudicated at least three times, as I see it.

What would be the total cost of such an effort, and would it not be more cost effective to simply conduct a one-time adjustment of status to permanent residence? Why was that option rejected?

Ms. MEISSNER. I would have to check my notes to give you the precise dollar figures, and I will relay them to you.

The legislation proposal was developed to insure a safe monitoring system and be certain that there is some control and checks on the individuals involved. From the point of view of the Immigration Service, it is a considerable administrative burden, and we are looking at ways to minimize that consistent with the purposes of the program.

Senator SIMPSON. I do seriously hope that will be carefully examined, and we look forward to having a separate hearing on that issue at some future time.

Senator Kennedy, if you have questions, please.

Senator KENNEDY. Thank you, Mr. Chairman.

VOLUNTARY DEPARTURE AND SALVADORANS IN THE UNITED STATES

I want to join in welcoming Mr. Enders and the others to the subcommittee.

And I would like to, if I could, inquire about the issue of voluntary departure as it applies to Salvadorans. This is an issue I have been interested in for some period of time. I wrote the Secretary of State last April and I have followed this issue closely over a period of years, as it applied to Lebanon in 1975 and 1976, and later in Uganda and Nicaragua.

Massachusetts has a sizable Lebanese population, as other states in the country do, and we were finding situations in 1975 where the INS was deporting individuals back to Lebanon at a very considerable danger to their lives. But because of the civil strife and violence in Lebanon during 1975 and 1976, the Department agreed to allow stays of voluntary departure for Lebanese so that they would not face the very real danger of violence and death.

That was true with regard to Nicaragua in 1978 and 1979, a 2-year period where we did not require the Nicaraguans who were here in the United States to be deported back to Nicaragua.

Now we have a very considerable level of violence in El Salvador. I have some statistics from the ICRC—but you do not really need those statistics; all you really need to do is pick up the newspaper any day. The enormous tragedy that we saw just 2 or 3 weeks ago, where a large number of individuals were dragged out in the middle of the night and shot and killed. I think it is well understood that these are paramilitary groups and their acts of violence are done with at least the awareness and understanding of the government.

And according to the ICRC, violence in that country has not diminished from previous reporting periods over the last year. We are talking about some 17,000 civilians who are killed a year. Civilian casualties remain high; several thousands of assassinations; 150,000 Salvadorans are internally displaced; 200,000 Salvadoran refugees are outside their country; close to 400,000 persons, or 10 percent of the nation's population, are either internally displaced or outside of their country.

That is about what we had in Vietnam during the worst period of the war—the number of refugees and displaced persons. Yet still we are sending people back, 750, 800 a month, to El Salvador.

Do you know whether those people are being shot or killed when they get sent back?

Mr. ENDERS. They are not subject to persecution, Senator Kennedy.

Senator KENNEDY. They are not subject to persecution?

Mr. ENDERS. No, sir.

Senator KENNEDY. You know that as a fact?

Mr. ENDERS. There is an insurgency in the country which has resulted in civilian deaths, as you indicate, as well as deaths of the combatants. It has made people homeless, also. But it is our business to determine whether the individual applicant Salvadoran who is here in the United States illegally and applies for asylum is likely to be subject to persecution or not. And on a case-by-case basis the judgment has been largely, very largely that they are not.

Senator KENNEDY. Well, you had a different policy in 1975–1976 toward Lebanon and later toward Nicaragua, where you did not deport them. You did it because of the level of violence in those countries.

Can you tell us whether the level of violence is less now in El Salvador, than it was in Nicaragua?

Mr. ENDERS. Well, I cannot——

Senator KENNEDY. I mean, how many people have to get shot and killed in El Salvador before you adopt a voluntary departure policy for a limited period of time? How much violence does there have to be?

Mr. ENDERS. I do not think—I cannot make a comparison between the countries. The situations are quite different. In the case of Lebanon, after all, you have a country divided up into several different areas occupied by different groups, with constant warfare between them.

The situation in Nicaragua was very uncertain for a very prolonged period of time.

Senator KENNEDY. Was very what?

Mr. ENDERS. Very uncertain, sir.

Senator KENNEDY. In El Salvador?

Mr. ENDERS. In El Salvador the situation is one in which an insurgency continues, but in which most of the returning Salvadorans have come here for economic reasons—as you are aware, Senator Kennedy, there has been a very long-term migration of Salvadorans to this country. Approximately 250,000 came by various means prior to the outbreak of hostilities in that country.

Senator KENNEDY. Is that true about Nicaragua, too?

Mr. ENDERS. And many of them——

Senator KENNEDY. Why do you distinguish between the ones who came from Nicaragua and the ones that have come from El Salvador in how they are treated? You have exactly the same situation for Nicaragua. Some came here for economic reasons and some because of the fear of persecution. And you granted them voluntary departure because of the level of violence in Nicaragua.

I happened to have followed the Nicaraguan situation closely, as the author of the termination of military assistance there. And very frankly, I think you have got a much higher degree of violence and instability in El Salvador now.

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Mr. ENDERS. But Senator Kennedy, the criteria is the fear of persecution, as I understand it.

Senator KENNEDY. That is right for granting refugee status—not for instituting a policy of voluntary departure.

But why don't you tell us what happens to those individuals who go back?

Mr. ENDERS. Well, we have no basis——

Senator KENNEDY. Apparently you are quite satisfied that nothing happens to them. Maybe you could tell us or your staff could tell us what happens to them when they go back, 750 a month. Do you know what happens to them?

Mr. ENDERS. We have no basis to believe that they are subject to persecution, that they are subject to measures by their Government, that they are singled out for mistreatment by their Government, or indeed by the insurgents.

Undoubtedly it is true that El Salvador is for many El Salvadorans a dangerous country to live in. But their situation is not different from that of other El Salvadorans.

MEXICAN POLICY REGARDING SALVADORAN AND GUATEMALAN MIGRANTS

Senator KENNEDY. Does Mexico return them, do you know?

Mr. ENDERS. Mexico has a comparable case with Guatemala.

Senator KENNEDY. Does Mexico return Salvadorans?

Mr. ENDERS. Mexico has—as a matter of policy would wish to return illegal immigrants to their country. As a matter of fact, probably very little. As a matter of policy it does attempt to return Guatemalan peasants fleeing violence that has occurred in that country back to Guatemala.

Senator KENNEDY. Does it return El Salvadorans?

Mr. ENDERS. As a fact, no, sir.

Senator KENNEDY. It does not? Why does it not?

Mr. ENDERS. We would like to engage the cooperation of Mexico in——

Senator KENNEDY. Do you know why it does not return them?

Mr. ENDERS. I think it is unable to do so, sir.

Senator KENNEDY. It can return the Guatemalans and not return the El Salvadorans? Your answer is that the Mexicans do not do it because they are unable to do it or because they feel that the return of those refugees would provide at this period of time a potential danger to their lives?

Mr. ENDERS. My understanding, sir, is that the two phenomenon are quite different, that for a very long period of time a large number of Salvadorans have worked their way up through Mexico and lived for some time in Mexico prior to coming to the United States. The number of Guatemalans who come on that basis—there are some Guatemalans who come through that basis, but the Guatemalans I am referring to are those who come across the border in groups as a result of military action, and the Mexican Government seeks to return them.

Senator KENNEDY. Well, I would hope you might review that situation with the Mexicans. I might just finally say—I know my time is up—but when I talked to the head of ICRC operations, Mr.

John Pierre Hocke, he indicated he thought that the level of violence in El Salvador was the highest that he had seen for a country of its size since anything he has experienced since World War II.

And I would hope that this would be a policy that would be continually under review, and I would like to work with the Department and I have every intention of continuing to raise it with them to keep it under review.

And I thank Mr. Enders for his response.

Thank you, Mr. Chairman.

Senator SIMPSON. Thank you.

I would now recognize Senator Grassley, a new member of the subcommittee. And I presently see here four of the five members of the subcommittee. The remaining member is Senator Strom Thurmond. And it is just this type of participation that has been evident since we began our efforts.

Senator Grassley?

Senator GRASSLEY. A few weeks ago there was a decision made by an INS officer in Hong Kong that people were fleeing Southeast Asia for economic reasons rather than political reasons and therefore these people were not entitled to refugee status. That decision was overruled.

Would you please comment on the basis for this overruling, and does this indicate a need for a change in the legislative definition of the term "refugee."

Ms. MEISSNER. We believe that the definition of "refugee" as presently contained in the Refugee Act is sufficient, and the policy proposals that were made do not seek to change that definition.

The circumstances that you refer to about Southeast Asian admissions result from differences in information and opinion between some of the Immigration Services refugee officers in the field, and the general assessment made within the Government about persecution in Vietnam if people returned.

The decision that refugees in Southeast Asia are presumed to suffer political persecution if they were to return to their homelands is an interim decision which will be reviewed in consultation with the Congress in September. As you know, a high-level team of U.S. Government and non-Government officials is presently in Southeast Asia looking at the whole refugee situation there. We will be prepared to discuss in some detail in September with the Congress whether or not the circumstances in Southeast Asia have changed sufficiently to alter the number of Indochinese coming to the United States.

Senator GRASSLEY. You made in your statement just now that there was a reassessment of information and opinion, and then I think that there was an inference that maybe the official assessment of this—I assume that information is fact and opinion is opinion, and that maybe in the term "opinion" may be some room for political assessment or State Department diplomatic assessment.

Can you explain the difference between what might be based on fact versus opinion? And I am using your terminology.

Ms. MEISSNER. In any determination of an individual's eligibility for admission to the United States there is the information that you have in a one-on-one interview—the reasons the person states

for coming to the United States—and to balance this, an overall assessment of what the conditions in that part of the world are.

In the particular case of Southeast Asian refugees, not only the Immigration Service but also many people who work in Southeast Asia believe that the character of that refugee flow may well be changing, that some proportion would be more fairly characterized as an emigrant flow rather than a refugee flow. Most likely we will need to make some adjustment in the future with regard to that flow.

But we do not believe that it should be made solely on some interviews with particular refugees. We must also consider our overall policy for Southeast Asia and what the circumstances in Vietnam specifically are.

Senator GRASSLEY. I would like to ask, Mr. Hiller, are you from the Department of Justice?

Mr. HILLER. Yes, sir.

Senator GRASSLEY. Are you also?

Mr. HAWKES. No, sir.

Senator GRASSLEY. Mr. Hiller, I would like to ask you, what method will you use to determine whether an illegal alien was residing in this country prior to the date specified in the President's program, either 1981 for Cuban and Haitian entrants or 1980 for all other entrants?

Mr. HILLER. Well, sir, in individual cases that can be a somewhat nettlesome matter. It is going to be a matter in each case of requesting the person who would adjust their status to present factual evidence that would support his claim to continuous residence, and that could be such things as a W-2 form that illustrated he was employed for some period of time, or perhaps affidavits of other people or tax receipts from State governments, some body of material that would on balance give credibility to his claim to have been here.

Senator GRASSLEY. I would like to bring up a point that I asked the Attorney General yesterday. When the administration proposed to increase the per country ceilings for Canada and Mexico 20,000 each—and I assume that that lifted the total from 270,000 up to 310,000—was a corresponding decline in the overall immigration ceiling discussed? And if so, why was it rejected?

Mr. HILLER. It was discussed and considered, and the Cabinet and the President at this time are of the view that that would not be an appropriate way to respond to the particular needs that were perceived in the case of Canada and Mexico. It could, of course, as a matter of arithmetic, have been done.

As you can imagine, the international foreign policy implications of adjusting the Canadian and Mexican admissions at the expense of other countries, whose admissions we also benefit from, would have been problematic. And we did not feel that the change of 40,000 was worth the candle of asking all of the other countries of the world to draw in their belts to that extent.

RETURN OF CUBAN EXCLUDABLES

Senator GRASSLEY. Attorney General Smith indicated that the administration proposed to return the Cubans who were now de-

tained in Fort Chaffee and in the Atlanta Federal Penitentiary, to Cuba. Can any of you elaborate on these plans or proposals?

Mr. HILLER. Ambassador Enders might address that.

Senator GRASSLEY. Mr. Enders?

Mr. ENDERS. Senator, I would like to make a couple of points about that if I could. One, we are quite certain, quite clear, I want to be quite definite on the notion that these people, inadmissible under our law, must be returned to Cuba. That is our position and our view. We have been looking very closely at our Cuba policy. We have been examining intensively a number of ways that this might be accomplished, looking at international measures that might be taken. And I can assure you that we are giving the closest, most active attention to this.

Senator GRASSLEY. But you cannot comment on any of the proposals? If there is an inability to comment, is it because it is in the area of diplomatic negotiation? Is that why you cannot comment? Or are not the plans and proposals really finalized yet?

Mr. ENDERS. I would rather not characterize at this point the state of what the options and what might be done in detail, other than to assure you that it is under very active consideration, sir.

Senator GRASSLEY. Well, can you tell me, are the policy determinations made and it is just a matter of carrying them out or are they still in the planning stage, the foreign relations stage?

Mr. ENDERS. We are very clear on what we wish to do, sir.

Senator GRASSLEY. Thank you.

Senator SIMPSON. How is that?

Senator GRASSLEY. Well, I think I can appreciate some of the problems.

Senator SIMPSON. Let me make a very swift and I hope a precise comment, because some of the questioning will be directed to the issue of why and how we get to the situation of selecting between refugees who are victims of persecution and those who come here for economic benefit. And I think that it comes back to what I have said before. We need a redefinition of the term "refugee" and we need a redefinition of the term "persecution." That is my humble opinion.

Because—and I just want to say this as clearly as I can—even if a person faces a high risk of injury or death in his country, the statutory definition of "refugee" does not cover that. The definition of "refugee" says persecution, and then we stop there. This issue arose during yesterday's hearing, it happens today, it happens every time we discuss persecution.

The statute says "persecution on account of race, religion, nationality, membership in a particular social group or political opinion." That is all it says. So a country can be exceedingly dangerous and perilous for human beings and in no case would that qualify the people leaving that country as refugees under U.S. law. I think that it is a very critical to keep this in mind, and each time I hear the phrase "persecution" I am going to refer back to the statute, and hope others will, and read exactly what it says.

So it is going to be an interesting few months.

I have several other questions and will submit them in writing. There may be questions from other members of the panel. As I say, three of the members of the subcommittee were on the Select

Commission on Immigration and Refugee Policy—Senator Kennedy, Senator DeConcini, and myself. Senator Grassley and Senator Thurmond are the remaining members of the panel of five, and all have expressed great interest.

I might just ask you, Doris Meissner and Dave Hiller, what is your feeling about redefining the terms "persecution" and "refugee" under the Immigration and Nationality Act?

Ms. MEISSNER. My sense is that the Refugee Act is fine in its present language. It is a question of application and application has to be worked out over time. After all, the Refugee Act is still only 1 year old. We have had situations occur in the past years but the proper way to work these out is through the consultation process based on some experience.

We considered quite carefully whether the definition the word "persecution" ought to be more carefully defined statutorily, and we were unable to come up with better language that would not hurt us in some other ways.

Mr. HILLER. There is one question, Senator, that I have, that I have not looked into a great deal. I will just raise it for your attention. That is the issue of whether one can become a refugee only upon leaving one's country for an economic purpose, and then if he or she would face retribution of some sort upon return because the regime viewed the act of leaving for reasons other than persecution as itself a betrayal of some sort. It is, I think, a difficult issue and it is not answered by the act's terms, although if you had to read the act to decide the issue it would require, I think, only that one be outside of his or her country and not be able to return for reason of persecution.

Senator SIMPSON. That is the true Catch-22 that we came across during the deliberations of the Select Commission.

Mr. HILLER. And the problem of one who leaves being bootstrapped into the refugee status, essentially not through a choice of his own but through the act of his country, is worrisome.

Senator SIMPSON. Indeed it is. I thank you very much for your participation. It has been most helpful to us to begin to build this record, which we now are doing in this the third of many such hearings. Thank you so much, all of you, for your attention.

We will have a 5-minute recess before the senatorial panel presents itself.

[Brief recess.]

Senator SIMPSON. The hearing will come to order, please. I would like to welcome to the hearing three of my colleagues. Since you have always been most generous with me as I have testified before you, I would not deign to turn this timer light on. However, if you could keep your remarks within a 5- or a 10-minute spectrum, that would be very, very helpful to this chairman.

The fourth member of the panel is Ben Civiletti, our former Attorney General. I worked with Ben on the Select Commission on Immigration and Refugee Policy and came to greatly enjoy him as a person, and he contributed greatly to the efforts of the Select Commission. We were together on several subcommittees of that extensive effort. It is good to have you here.

So we will proceed. Senator Hawkins, you are now recognized.

STATEMENT OF HON. PAULA HAWKINS, U.S. SENATOR FROM THE STATE OF FLORIDA

Senator HAWKINS. Thank you, Mr. Chairman. I have enjoyed working with you over these past few months on a problem that is a national problem, and especially the mass emigration problem. I feel that that is an emergency problem that we must discuss.

I brought a map with me today for the members of the committee to look at. I spent the last hour trying to figure out how we could have the next boatload of Haitians land in Wyoming.

Senator SIMPSON. I do not see that on the map anywhere, thank you.

Senator HAWKINS. But we do know that every country south of Florida geographically is a bubbling point today. Things are getting worse, and indeed if they sail out the obvious point of landing will be Florida. So therefore I compliment you for discussing and addressing yourself to the problems that mass emigration causes, the magnitude of problems that we have in Florida and the urgency that we have in south Florida to address at once.

I would like to preface my remarks by saying I believe that the people of Florida have been kind and generous beyond expectation in responding to the Cuban-Haitian immigration crisis. Floridians, like all Americans, realize that their own heritage is rooted in immigration from foreign lands. When most of our forefathers stepped onto American shores, they too lacked employment and were ignorant of the English language. They worked hard to build a future for themselves and for their children.

Cubans have contributed over the last 20 years a phenomenal amount to Florida's economy and we do not want to take away their contributions to Florida and especially south Florida's great success story when we discuss the latest exodus and the Cuban-Haitian problem. Certainly no one blames the Cubans or Haitians for seeking to improve the quality of their lives. We all do that. Most of these people are innocent victims. But now so are the people of south Florida.

The morning papers this morning say that it is impossible to believe that any Government program short of massive force will stop the flow of people willing to risk their lives and fortunes for a chance at the American dream, even though our policy was announced. No one believes that our country should cease to harbor those who are fleeing political persecution or even those who are hoping for a better life.

However, I hope one thing rings clear through these hearings and subsequent discussions between the Congress and the administration, and that is that the burden of the mass of aliens who have entered this country illegally can no longer be shouldered by Florida alone. As the Attorney General acknowledged yesterday by his announcement of the administration policy for dealing with immigration and refugee problems, these problems are national problems. These national problems require a national solution.

I have a newspaper article here with a discussion and an argument that ensued when the Federal Government tried to transfer 90 Haitians from Florida to Texas, and the Congressman became so outraged he called for a congressional investigation. And it is that kind of regional political and economic arguments that we are

going to have to put in the background if we are going to solve this problem.

I serve on the Labor Subcommittee of the Labor and Human Resources Committee and I want you to know that when we tried to get some money for reimbursement for the Cuban-Haitian domestic assistance program we only received 3 out of 17 votes on that committee, just to reimburse Florida for money we had already spent for this problem.

We cannot have that kind of politics, regional politics, in this Senate and in this House if we are going to pass legislation to address this as a national problem.

I believe the key to understanding the difficulties facing Florida is that under the present system of dealing with mass immigration no one profits. Haitians and even some Cubans who arrive in this country seeking a better life are either housed in the Krome North facility, which is overcrowded and which has had severe problems with sewage and water, or they are released onto the streets of Miami with few marketable skills, difficulty in communicating, and few if any relatives to provide support.

In the meantime, they become dependent upon our Government and especially upon the citizens of Florida. The sentiments of the people of Florida are, I believe, summed up in a message on a sign that stands in front of a church in Miami. On this sign, where the title for the weeks' sermon is normally posted, is written a short sentence. "Why has the United States Government abandoned Miami?"

I do not think that I could more eloquently summarize the feelings of the people of Florida concerning the immigration problem. From January 1 to the present, estimates of the number of Haitians inundating Florida's shores range from 16,000 to 32,000. This is in a little more than 6 months. When this is added to the approximately 125,000 persons who arrived during the Mariel boatlift, this amounts to an almost incomprehensible burden on the social and economic fabric of Florida.

And what is frustrating is that there is no end in sight for the people of Florida. Haitians continue to arrive every day, with 400 landing this past weekend. There are reports from Florida of Haitians pulling their boats ashore, casually walking across the beach and onto the streets. No documents are given, no health check can be administered, no idea of really how many Haitians have entered Florida.

And when you realize that the bulk of the burden of the Cuban-Haitian influx has fallen on only two of Florida's counties, Broward and Dade, the magnitude of this disaster is apparent. I checked and Cheyenne, Wyo., the capital of Wyoming, had 247,082 people in 1980, compared to 140,000 that arrived in our State in a matter of months. You can see that several cities could have been founded with the bodies that we had arrive in this short period of time.

The toll on Florida has been heavy. The State of Florida estimated yesterday that Floridians will have to pay at least, the bottom, the very bottom sum, $30 million in funds that will never be reimbursed by the Federal Government.

But the financial cost to the people of Florida is only a very small cost of the burden they are bearing. Social tensions have mounted between some groups who feel the loss of jobs because the eager new entrants are willing to work at any job at any wage.

In addition, there are concerns over the reports over diseases that have been brought into the country by the entrants. The center for disease control in Atlanta states that 45 percent of the Haitian arrivals are infected with parasites. Tom Rice, who is a local Miami tropical disease specialist, states that 80 to 90 percent of all arrivals are infected by parasites, that they have checked in our health facilities. Cuban intelligence, the intelligence group, tells us that these groups are infiltrated with subversive activities also.

The greatest concern to Floridians is the increase in crime that has accompanied the arrival of the Cubans and the Haitians in this latest influx. Prior to the Mariel boatlift, the Cuban population as an ethnic group had the lowest rate of crime of any ethnic group in the United States, and now we are seeing in 1980, 55,077 major crimes were committed, 10,000 extra gun permits over the previous year in the city of Miami alone. Citizens no longer feel safe enough to walk the street. And the strain on our law enforcement in the State of Florida cannot be attested to. We all know what is happening if we read the daily papers.

I think you know, Mr. Chairman, as we have discussed it many times, that the situation in Florida is intolerable. And I am pleased that the administration has released its immigration and refugee policy. We are fortunate to have a decisive yet understanding President. There are a lot of criticisms of the policy, but at least we have a policy that we can talk about.

We have had so many blue ribbon studies over the last few years that I have become weary just reading them. I believe the President's policy is a step toward establishing a strong immigration and refugee policy. But I must reiterate, you need a national ability to enforce a national policy and that means greatly increased surveillance of our shores, and especially Florida.

I plan to actively support legislation aimed at penalizing boatowners who bring illegal aliens into the country. Literally hundreds of Haitians arrive on Florida beaches each day in boats provided by ships' captains who park just outside U.S. territorial waters. Their $2,000 per person cargo is sent into these boats and pointed toward nearly 1,350 miles of shoreline, 580 miles of which are on the Atlantic coast. If they make shore, seldom do they head for waiting jobs. Rather, they head directly for Florida's welfare offices.

We need legislation to speed up the exclusionary hearing process, and this will mean finding holding facilities to prevent illegal aliens from wandering the streets. And yet, when we tried to contract with Fort Allen, the Justice Department faced all kinds of resistance and only could agree that they would accept the aliens that had no communicable diseases, emotional or mental problems, or criminal convictions. And indeed, they could only stay 1 year, and that means Florida had to keep the rest of those.

I think there are a lot of unanswered questions in the new policy, and I am sure you are going to get some answers, because

the greatest concern is that there is no clearcut policy to deal with the existing deterioration of the social and economic fabric of south Florida. Where are these permanent facilities going to be built, when, where, and then when will they be opened?

America's immigration policy can still be the most generous and open of any country in the world. But America must stop rewarding those who flaunt our laws and jump themselves to the head of the legal immigration line.

Mr. Chairman, I congratulate you on these hearings, because I know under your guidance they will lead to an immigration policy badly needed by our country. And I would like to urge, in fact beg, our colleagues in the Senate and the House of Representatives to address this as a national problem and not a regional or a political problem. We are going to need everyone's cooperation.

Thank you.

[The prepared statement of Senator Hawkins follows:]

Prepared Statement of Senator Paula Hawkins

MR. CHAIRMAN, I AM PLEASED TO APPEAR BEFORE THIS COMMITTEE TO DISCUSS WITH YOU THE PROBLEM OF MASS IMMIGRATION. I HOPE TO PAINT FOR YOU, TODAY, A PICTURE OF THE MAGNITUDE OF PROBLEMS CAUSED BY THE MASS IMMIGRATION OF CUBANS AND HAITIANS INTO FLORIDA, AND TO PORTRAY THE URGENCY OF THE NEED OF SOUTH FLORIDA.

I WOULD LIKE TO PREFACE MY REMARKS BY SAYING THAT I BELIEVE THAT THE PEOPLE OF THE STATE OF FLORIDA HAVE BEEN KIND AND GENEROUS BEYOND EXPECTATION IN RESPONDING TO THE CUBAN-HAITIAN IMMIGRATION CRISIS. FLORIDIANS, LIKE ALL AMERICANS, REALIZE THAT THEIR OWN HERITAGE IS ROOTED IN IMMIGRATION FROM FOREIGN LANDS. WHEN MOST OF OUR FOREFATHERS STEPPED ONTO AMERICAN SHORES THEY TOO LACKED EMPLOYMENT AND WERE IGNORANT OF THE ENGLISH LANGUAGE. THEY WORKED HARD TO BUILD A FUTURE FOR THEMSELVES AND THEIR CHILDREN. CERTAINLY NO ONE BLAMES THE CUBANS OR HAITIANS FOR SEEKING TO IMPROVE THE QUALITY OF THEIR LIVES, WE ALL DO THAT. MOST OF THESE ENTRANTS ARE INNOCENT VICTIMS, BUT NOW SO ARE THE PEOPLE OF SOUTH FLORIDA.

NO ONE BELIEVES THAT OUR COUNTRY SHOULD CEASE TO HARBOR THOSE WHO ARE FLEEING POLITICAL PERSECUTION OR EVEN THOSE WHO ARE HOPING FOR A BETTER LIFE. HOWEVER, I HOPE ONE THING RINGS CLEAR THROUGH THESE HEARINGS, AND SUBSEQUENT DISCUSSIONS BETWEEN THE CONGRESS AND THE ADMINISTRATION, AND THAT IS THAT THE BURDEN OF THE MASS OF ALIENS WHO HAVE ENTERED THIS COUNTRY ILLEGALLY CAN NO LONGER BE SHOULDERED BY FLORIDA ALONE. AS THE ATTORNEY GENERAL ACKNOWLEDGED YESTERDAY BY HIS ANNOUNCEMENT OF AN ADMINISTRATION POLICY FOR DEALING WITH IMMIGRATION AND REFUGEE PROBLEMS, THESE ARE NATIONAL PROBLEMS. THESE NATIONAL PROBLEMS REQUIRE NATIONAL, NOT STATE, SOLUTIONS. THE BURDEN MUST BE BORNE BY ALL STATES AND TIME MUST BE PROVIDED FOR FLORIDA TO RECOVER, ECONOMICALLY AND SOCIALLY, FROM THE MOST RECENT INNUNDATIONS.

I BELIEVE THAT THE KEY TO UNDERSTANDING THE DIFFICULTIES FACING FLORIDA IS THAT UNDER THE PRESENT SYSTEM OF DEALING WITH MASS IMMIGRATION NO ONE PROFITS. HAITIANS, AND EVEN SOME CUBANS, WHO ARRIVE IN THIS COUNTRY SEEKING A BETTER LIFE ARE EITHER HOUSED IN THE KROME NORTH FACILITY WHICH IS OVERCROWDED AND WHICH HAS HAD SEVERE PROBLEMS WITH SEWAGE AND WATER PROBLEMS, OR THEY ARE RELEASED ONTO THE STREETS OF MIAMI WITH FEW MARKETABLE SKILLS; DIFFICULTY IN COMMUNICATING; AND FEW IF ANY RELATIVES TO PROVIDE SUPPORT. UNDER THESE CONDITIONS IT IS NO WONDER THAT SO MANY FROM THESE GROUPS ARE JOBLESS. IN THE MEANTIME, THEY WILL BECOME DEPENDENT, PERHAPS EVEN ADDICTED, TO THE WELFARE SYSTEM. CERTAINLY RECEIVING A WELFARE CHECK IS SIMPLER THAN LEARNING A FOREIGN LANGUAGE AND DEVELOPING AN EMPLOYABLE SKILL.

THE SENTIMENTS OF THE PEOPLE OF FLORIDA ARE, I BELIEVE, SUMMED UP IN THE MESSAGE ON A SIGN THAT STOOD IN FRONT OF A CHURCH IN MIAMI A SHORT WHILE AGO. ON THIS SIGN WHERE THE TITLE FOR THE WEEK'S SERMON IS POSTED WAS WRITTEN THIS SHORT SENTENCE--"WHY HAS THE UNITED STATES GOVERNMENT ABANDONED MIAMI?"

I DO NOT THINK THAT I COULD HAVE MORE ELOQUENTLY SUMMARIZED THE FEELINGS OF THE PEOPLE OF FLORIDA CONCERNING THE IMMIGRATION PROBLEM. FROM JANUARY 1ST TO THE PRESENT, ESTIMATES ON THE NUMBER OF HAITIANS INNUNDATING FLORIDA'S SHORES RANGE FROM 16,000 TO 32,000. THIS IS IN A LITTLE MORE THAN SIX MONTHS. WHEN THIS IS ADDED TO THE APPROXIMATELY 125,000 PERSONS WHO ARRIVED DURING THE MARIAL BOATLIFT THIS AMOUNTS TO AN ALMOST INCOMPREHENSIBLE BURDEN ON THE SOCIAL AND ECONOMIC FABRIC OF FLORIDA. WHAT IS MOST FRUSTRATING IS THAT THERE IS NO END IN SIGHT FOR THE PEOPLE OF FLORIDA. HAITIANS CONTINUE TO ARRIVE EVERY DAY, WITH 400 LANDING THIS PAST WEEKEND. THERE ARE REPORTS FROM FLORIDA OF HAITIANS PULLING THEIR BOATS ASHORE AND CASUALLY

WALKING ACROSS THE BEACH AND ONTO THE STREETS. NO DOCUMENTS ARE GIVEN; NO HEALTH CHECK IS ADMINISTERED; AND NO IDEA OF REALLY HOW MANY HAITIANS HAVE ENTERED FLORIDA. AND WHEN YOU REALIZE THAT THE BULK OF THE BURDEN OF THE CUBAN-HAITIAN INFLUX HAS FALLEN ON ONLY TWO OF FLORIDA'S COUNTIES, BROWARD AND DADE, THE MAGNITUDE OF THIS DISASTER IS APPARENT.

THE TOLL ON FLORIDA FOR THE MASS ENTRY OF CUBANS AND HAITIANS HAS BEEN HEAVY. THE STATE OF FLORIDA ESTIMATES THAT FLORIDIANS WILL HAVE TO PAY AT LEAST $30 MILLION DOLLARS IN FUNDS THAT WILL NOT BE REIMBURSED BY THE FEDERAL GOVERNMENT. BUT THE FINANCIAL COST TO THE PEOPLE OF FLORIDA IS ONLY A VERY SMALL PART OF THE BURDEN THEY ARE BEARING. SOCIAL TENSIONS HAVE MOUNTED BETWEEN SOME GROUPS WHO FEAR THE LOSS OF JOBS BECAUSE THE EAGER NEW ENTRANTS ARE WILLING TO WORK AT ANY JOB FOR ANY WAGE. IN ADDITION, THERE ARE CONCERNS OVER THE REPORTS OF DISEASES THAT HAVE BEEN BROUGHT INTO THE COUNTRY BY THE ENTRANTS, AND ALSO OVER THE REPORTS OF CUBAN INTELLIGENCE AGENTS BEING RELEASED INTO GROUPS OF BOTH CUBANS AND HAITIANS ENTRANTS SO THAT THEY CAN INFILTRATE THESE GROUPS AND BEGIN SUBVERSIVE ACTIVITIES. BUT I BELIEVE THAT THE GREATEST CONCERN TO FLORIDIANS IS THE INCREASE IN CRIME THAT HAS ACCOMPANIED THE ARRIVAL OF THE CUBANS AND HAITIANS. THE MOST RECENT FIGURES FROM THE CITY OF MIAMI INDICATE THAT THE NUMBER OF MAJOR CRIMES IN THE CITY INCREASED 40% FROM 1979 TO 1980. IN 1979, THERE WERE 39,498 MAJOR CRIMES COMMITTED IN THE CITY OF MIAMI, AND IN 1980, 55,027 MAJOR CRIMES WERE COMMITTED. THIS TREMENDOUS INCREASE IN MAJOR CRIMES DURING THE YEAR OF THE MARIEL BOATLIFT HAS LED TO NEAR PANIC IN SOME OF THE AFFECTED COMMUNITIES. CITIZENS NO LONGER FEEL SAFE ENOUGH TO WALK THE STREETS, DAY OR NIGHT. THIS SITUATION HAS CAUSED A TREMENDOUS STRAIN ON THE LAW ENFORCEMENT RESOURCES OF THE STATE OF FLORIDA, AND THE COMMUNITIES INVOLVED.

SO MR. CHAIRMAN, AS YOU CAN SEE FOR YOURSELF, THE SITUATION IN FLORIDA IS INTOLERABLE. FOR THIS REASON I AM PLEASED THAT, AFTER SOME DELAY, THE ADMINISTRATION HAS RELEASED ITS IMMIGRATION AND REFUGEE POLICY.

WE ARE FORTUNATE INDEED TO HAVE A DECISIVE YET UNDERSTANDING PRESIDENT. IN THE PAST FIVE YEARS THERE HAVE BEEN NO FEWER THAN FOUR MAJOR "BLUE RIBBON" NATIONAL COMMISSIONS ON IMMIGRATION. WE MUST ALSO ADD THE NUMEROUS TASK FORCES, STUDY GROUPS, HEARINGS, AND SPECIAL COMMITTEES. THE PREVIOUS ADMINISTRATION FAILED TO REALIZE THAT NO DECISION IS A DECISION THAT FAVORS THE STATUS QUO: THAT NO POLICY IS A POLICY OF NEGLECT. YET, WITH THOUSANDS OF PEOPLE IN THE STREETS OF MIAMI AND OTHER FLORIDA CITIES, THE CRISIS IS OBVIOUS. THE CRISIS REQUIRES NO MORE STUDY, IT REQUIRES ACTION.

I WELCOME THE PRESIDENT'S POLICY AS A SOLID STEP TOWARD ESTABLISHING A STRONG IMMIGRATION AND REFUGEE POLICY. WE NEED PROCEDURES FOR CONTROLLING THE INFLUX OF PEOPLE AND MONEY FOR ENFORCING OUR LAWS. WE MUST REESTABLISH OUR NATIONAL ABILITY TO ENFORCE A NATIONAL POLICY AND THIS MEANS GREATLY INCREASED SURVEILLANCE OF OUR SHORES.

I PLAN TO VERY ACTIVELY SUPPORT LEGISLATION AIMED AT PENALIZING BOAT OWNERS WHO BRING ILLEGAL ALIENS INTO THE COUNTRY. LITERALLY HUNDREDS OF HAITIANS ARRIVE ON FLORIDA BEACHES EACH DAY IN BOATS PROVIDED BY SHIP'S CAPTAINS WHO PARK JUST OUTSIDE UNITED STATES TERRITORIAL WATERS. THEIR $2000 PER PERSON CARGO IS SENT INTO THESE BOATS AND POINTED TOWARD NEARLY 1350 MILES OF SHORELINE, 580 MILES OF WHICH ARE ON THE ATLANTIC COAST. IF THEY MAKE SHORE, SELDOM DO THEY HEAD FOR WAITING JOBS, RATHER, AS I MENTIONED EARLIER, MANY HEAD DIRECTLY FOR FLORIDA'S WELFARE OFFICES.

I ALSO PLAN TO VIGOROUSLY SUPPORT LEGISLATION TO SPEED UP THE EXCLUSIONARY HEARING PROCESS, AND THIS WILL MEAN FINDING HOLDING FACILITIES TO PREVENT ILLEGAL ALIENS FROM WANDERING THE STREETS.

HOWEVER, MR. CHAIRMAN, I DO HAVE SOME UNANSWERED QUESTIONS CONCERNING THE NEW POLICY. MY GREATEST CONCERN IS THAT THERE IS NO CLEAR CUT POLICY TO DEAL WITH THE EXISTING DETERIORATION OF THE SOCIAL AND ECONOMIC FABRIC OF SOUTH FLORIDA. IN ADDITION, THE ADMINISTRATION PROPOSES TO BUILD THE PERMANENT FACILITIES FOR ILLEGAL ALIENS BUT I WANT TO KNOW WHERE AND WHEN THESE FACILITIES WILL BE OPEN. I AM CONCERNED THAT THE TOTAL NUMBER OF ENTRANTS WE ACCEPT EACH YEAR MAY BE TOO LARGE.

AMERICA'S IMMIGRATION POLICY CAN STILL BE THE MOST GENEROUS AND OPEN OF ANY COUNTRY IN THE WORLD. BUT AMERICA MUST STOP REWARDING THOSE WHO FLAUNT OUR LAWS AND JUMP THEMSELVES TO THE HEAD OF THE LEGAL IMMIGRATION LINE.

MR. CHAIRMAN, I CONGRATULATE YOU ON THESE HEARINGS BECAUSE I KNOW THAT UNDER YOUR GUIDANCE THEY WILL LEAD TO THE IMMIGRATION POLICY SO BADLY NEEDED BY OUR COUNTRY.

Senator SIMPSON. Thank you very much, Senator Hawkins. I do appreciate hearing your testimony. As I could not allow you to testify at the joint hearing in the House of Representatives because of certain parliamentary proceedings there. I promised you at the time that you could open testimony at this hearing. To my colleagues on either side I want to say that I recognized the request of Mrs. Hawkins to testify and to appear here after that initial refusal.

I hope you will understand that breach of seniority. It was not based upon anything such as partisanship or a lack of respect for the seniority system. And certainly, as Congressman Mazzoli and I have said many times, there is no time for partisanship in this issue. I make myself available to the Governor of Florida as I would to anyone here and have had some good visits with him. Gov. Dick Lamm of Colorado and I are coauthoring various editorial commentaries and papers on the issue, and that is the way it has got to be if immigration reform is ever going to be accomplished.

So I just wanted to make those remarks, and now take great pleasure in recognizing Senator Lawton Chiles. We know of your tremendous interest in this area also. Please proceed.

STATEMENT OF HON. LAWTON CHILES, U.S. SENATOR FROM THE STATE OF FLORIDA

Senator CHILES. Mr. Chairman, I also want to commend you and the subcommittee for calling these hearings.

Yesterday the administration came forth with its long awaited immigration policy. What I would like to talk about is the administration's policy, both as it relates to the current situation in south Florida and as it relates to the long-term immigration issues.

It is important to recognize at the outset that the situation in south Florida is a little separate and distinct from the long-term immigration issues. Dealing with the long-term issues is going to help the situation in south Florida, but reaching these solutions is going to take time and the situation in south Florida is in a crisis.

I do not think it can really wait for all of the long-term solutions. It demands immediate action and it demands that action now, and moving quickly and effectively to help south Florida has to be a critical part of any immigration reform package.

With that in mind, I would like to make several comments about the administration's plan. First, I am glad, relieved in fact, that the administration has finally come forward with a plan.

I am disappointed because the administration's plan offers no immediate relief for south Florida. On Sunday and Monday of this week, 432 people, Haitians, arrived in south Florida. Under the administration's proposals as we now have it, that many will be free to arrive this weekend, next weekend, the next weekend, and the weekend after that. I think the administration could have taken immediate steps to deal with the south Florida crisis under existing law. It did not.

As for the administration's approach to the longer term national problems, once again I am delighted that they have come up with some proposals. I think that is a start and allows us and you and the committees to begin work. But I think that the administration's present proposals contain fundamental flaws, and I will discuss those in a moment.

First I would like to talk about the crisis in south Florida and about the effect that the administration's proposals will have on the situation there. For most Americans immigration is an abstract problem. They certainly were upset with the Mariel boatlift. They are upset that we do not have a national policy that seems to be working, but it is something that they kind of think about once in a while when they see it on television or they read about it.

But in south Florida it is not that way. It is not an abstract problem. I think we have to recognize that the problems we are talking about were inherited by this administration. They were not created by this administration, they were created by a previous administration. And so when the new administration came into office I, like many people in Florida, felt we had to be patient, we had to give the administration time to come to grips with this, and I think we were doing that.

However, as the time kept going, then I think the people became frustrated. I know I certainly did, and began to lose my patience. Unfortunately, there is little in the administration plan to remove that frustration that is so strong with the people of south Florida. I do not see anything to provide immediate relief in stopping the daily flow of the boats to south Florida, and what I had hoped to see in the President's package were announcements of actions to be taken immediately.

Now, there was a news report this morning that the Attorney General plans to begin to interdict boats immediately. I certainly hope he does. That would be the best of all news for Florida. I understand that there has been some change in what the State Department has said about that today to this committee, and we have had some different reports to my staff in calling the Justice Department today, that that was not exactly what he meant, that they still feel that legislation is going to be needed before they can start an interdiction.

It may be that some additional legislation is needed, but right now I think the Coast Guard does have that right within 3 miles to interdict. I think we ought to use that right and we ought to test it.

We also know that the Coast Guard outside of the territorial waters can board a stateless or unregistered vessel. The boats we are talking about are not flying flags. They are not registered under any country. They basically are unregistered and stateless. And I think again, the Coast Guard would have the authority to do that.

The administration proposes to seek Haitian cooperation in restraining illegal immigration and to return the Haitians who have entered the country illegally. I certainly support that. I urge that that take place immediately.

On the Foreign Assistance Act, there is an amendment that was placed on the House side by Congressman Mica and Congressman Fascell to help the Haitians in their cooperation by tying some of the foreign aid or saying that the President has to certify that they are taking certain steps to be cooperative before we release the foreign aid. I intend to offer that as an amendment on the Senate bill when that comes up.

Many of the Haitians and other aliens who arrive on south Florida shores are taken to a holding facility pending the outcome of their exclusionary hearing, the INS holding facility, those that we actually pick up. That facility, an old military installation, is called North Krome. North Krome as much as anything else has come to symbolize the failure of the immigration policy in south Florida. It has an official capacity of no more than 800 persons. Yet there is usually twice that many. Today there is over 1,200 people in North Krome. Its water and sewer systems do not always function. That creates unsanitary conditions and a public health hazard.

Last month someone in the Federal Government came up with a unique solution to solve the overcrowding at North Krome. One night 100 Haitians were told that they were free to leave the Krome site to reunite with their families. They were simply turned out in the street, uneducated peasants with no money who cannot speak English.

Later on INS claimed that this was a mistake. But this extraordinary action and the complete lack of responsibility that it stands for typifies in the eyes of the people of south Florida the present approach to the problem of refugees and immigration policy.

Just 2 weeks ago Bob Graham, the Governor of Florida, filed a lawsuit against the Federal Government seeking to close North Krome because of the health and safety dangers that it poses, and required that new processing facilities be established in other

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States. I urged him to file that lawsuit. He has an obligation to protect the health and safety of the citizens of south Florida. And it is clear that the Federal Government was not meeting its responsibilities to carry out the immigration laws.

The administration's proposal tells us that it is considering new sites for these processing facilities. Mr. Chairman, that does not give much hope or comfort to the people of south Florida. We have been considering that last year. We have been considering it all of this year. Senator Hawkins has pointed out what happens when you start talking about moving any of those people to another state.

In fact, they say they have set aside $35 million in next year's budget for processing centers. That may sound good on the surface, but next year's budget means that we are that far away from a new processing center to be opened immediately. Next year's budget does not give any comfort to the people of south Florida.

I was encouraged to learn that last week the Government had reached an agreement to relocate 800 Haitians to Fort Allen in Puerto Rico. I learn this morning that yesterday's court hearing in Boston did not clear up the immediate action and no new court date has been set.

In south Florida we are seeing hundreds of people arrive every week. Fort Allen will only help for like a week and a half, if it is 800, with the number that we have been getting into Florida.

I note with great interest, though, that the U.S. Government has entered into an agreement with the Governor of Puerto Rico that they will only send 800 people to Puerto Rico. I can tell you that the Governor of Florida would love to be able to enter into an agreement with the United States that you would only send, that this Government would only send 800 to Florida.

One of the most nagging problems facing us in the aftermath of the Mariel boatlift is the issue of Cuban criminals. I think the Cuban criminals—and the people of Florida and I think the people of this country want the Cuban criminals—and I am talking about the murderers and the rapists, those people accused of violent crime and convicted of violent crime should be sent back to Cuba.

The administration has said again in their report they are going to pursue international measures to secure the return of those Cubans found to be excludable under U.S. law. I support that, but that pursuing is not getting anybody sent back now. And that again has been a policy that we have been pursuing since the time that they arrived.

I read also of a press release from the Justice Department that I received this week that said that we are beginning immediate case-by-case determinations of all of the people in Atlanta, the remaining people in Fort Chaffee, to determine about the release of those people. And it says the panel is to recommend the release of the prisoners based upon whether the detainee is currently nonviolent and is likely to remain so and is unlikely to commit any criminal offense if released.

That is a little inconsistent with the statement that we are pursuing sending the criminals back to Florida—back to Cuba. The people of south Florida know about crime in the aftermath of the unregulated immigration. The crime situation in Dade County is

exploding. In one neighborhood in Miami there is over a 100-percent increase in homicides, a 300-percent increase of rapes, a 350-percent increase in armed robbery.

The Mariel refugees are the victims of this crime. In a current article the Miami Herald found that murder was the biggest cause of death for the Mariel refugees; 90 homicide victims of the Mariel boatlift. There have been 90 that have been murdered as of last month. That accounts for 62 percent of the total deaths of those people that arrived with the Mariel boatlift.

Atlee Wampler, the U.S. attorney from south Florida, summed up the south Florida crime situation in a letter to the administration in which he pointed out that the administration of justice in south Florida is on the point of collapse. An influx of 20,000 to 40,000 new illegal aliens would cause the total collapse of the system of justice in south Florida, he said. And since he wrote that letter 11,000 more illegal aliens have arrived.

It is clear that we need to increase the budget of INS and to make more personnel available in INS, both in Florida and across the country. Otherwise we are not going to be able to enforce our immigration laws. The administration has proposed what amounts to a $35 million increase in the INS budget. If you really look and see, though, where we started from the beginning of this year, you find that most of that increase is putting back money that was cut when the administration budget was originally presented. In fact, they are talking about including 500 and something new employees. That will leave us with a net cut of 600 employees from January 1 of this year, because that is what the budget proposed to cut.

Again, I have amendments that I hope that we can pass that will restore all of those employees. But the situation we have when we are talking about this massive problem is simply not going to be enough.

I want to speak a moment, if I can, to the long-range situation, the long-term situation.

Senator SIMPSON. I have been more than generous with the 10 minutes and I will continue to do so if you could summarize, Lawton. That would be helpful to us, because we have only so much time.

Senator CHILES. I understand.

Senator SIMPSON. We will be going all day here.

Senator CHILES. I understand your press for time, but I have been waiting for a long, long time, Mr. Chairman.

Senator SIMPSON. I know. Well, keep unloading. You finally have a forum. Go ahead. Let 'er rip. [Laughter.]

Senator CHILES. I want to shift now and comment on several aspects of the long-range plan. I have joined with Senator Huddleston in introducing a bill to reform our immigration laws and establish a national immigration policy. I think today certainly we are sending the wrong message when we say it is all right to come to the United States illegally, you will not get caught, and if you do get caught you will simply be in a holding facility for a few weeks, and then you will be out and you will get a job and you can start signing up for all of the benefits in this country.

We have got to change that and send a totally different message, that you cannot come, that you have got to get permission to come to this country before you arrive here, you have got to follow our laws. And if we cannot change that, we really almost cannot call ourselves a Nation if we cannot police our own border and determine who we are going to allow to get here.

The immigration—the administration's plan starts us and makes proposals to start changing that plan, and I certainly support that and the thrust of that. I think that it does not go far enough. There is no cap. In the Huddleston-Chiles bill there is a cap, a ceiling of 350,000. I think you have to put a cap. I do not think you are sending any kind of signal to the people of this country or to the people of other countries unless you say, with all of our policies, we are only going to be able to accept a certain number of people.

I happen to feel that that number would be fair, but that is something for the committees to determine. I think that we must do something on the hiring practices or the job availability. Now, the administration proposes that it be made unlawful to hire illegal aliens, but there is no provision in there for being able to enforce that. The employee sanctions, the $1,000 fine if you knowingly hire an illegal alien, that is kind of the policy that we have today. There are no cases ever brought because you have to show an intent and that is going to be impossible unless you set some criteria.

I feel that the noncounterfeitable social security card is a way of trying to provide a basis for setting a criteria, and I think something like this is going to have to be a part of the package.

The other provision that I am critical of, and that is all the discussion of amnesty in the plan. My feeling is we must first seal the borders. We must first know that we can stop the flow. If we discuss amnesty before we have sealed the borders, before we know that we have stopped the flow, we are only inviting a massive influx to come, because they say, regardless of the date being set at January 1, 1981, we probably can get that date extended or they will extend that date if we can get in there now.

And I think that is the great danger that we have and I hope the committee as it is going forward with the legislation will watch very carefully that we are doing something to make sure that we have cut off the flow, that we have reversed the process, before we go in and start laying in concrete all the provisions on amnesty.

Mr. Chairman, in closing I would like to turn back to the situation in south Florida. There is a new bumper sticker that you see on more and more cars in the Miami area. It says "Will the last person to leave please bring the flag." That sums up a lot of the feeling of frustration that is down there presently, and I would say with the tremendous movement that we have in Florida and people buying new homes—I now find that people in the central part of the State, the real estate agents are telling me, it is not the people that are coming from out of State that they are selling homes to, it is the migration from south Florida that they are selling homes to, people that are leaving the county.

That is bad. It is a situation that we have got to reverse. The people have been tremendously generous in that area in everything that they have done. They need to have some signal that their

Government cares something about them and is going to try to give them some help.

Again, I thank you very much for your patience and for the work that you have done in the area.

Senator SIMPSON. I appreciate that too, Lawton, and I know your deep personal frustration and I certainly know Paula and her feelings. And you have a situation there in Florida that must be addressed and it must be heard. And it is easy for all of us in other States to be less than responsive to what is really a critical problem. And I promise you that we will direct our attention to it.

[The prepared statement of Senator Chiles and additional material follow:]

PREPARED STATEMENT OF SENATOR LAWTON CHILES

Mr. Chairman, first, I would like to commend you and the Subcommittee for calling these hearings. It is yet another example of the leadership this Subcommittee has shown in trying to come to grips with the immigration problem which is confronting the United States today. I'm especially happy that you have begun by focusing on refugees and the question of political asylum. For us in Florida, this issue is the crux of the immigration problem.

Yesterday, the Administration came forward with its long awaited immigration policy. What I would like to do is talk about the Administration's policy, both as it relates to the current situation in South Florida, and as it relates to longer term immigration issues. It's important to recognize at the outset that the situation in South Florida is separate and distinct from long-term immigration issues. Dealing with the long-term problems will help the situation in South Florida, but reaching those solutions will take time. The situation in South Florida is a crisis. It can't wait for long-term solutions, it demands immediate action. Moving quickly and decisively to help South Florida has to be a critical part of any immigration reform package.

With that in mind, I'd like to make several general comments about the Administration's plan. First, I'm glad -- relieved in fact -- that the Administration has finally come forward with a plan. But I'm disappointed because the Administration's plan offers no immediate relief for South Florida. On Sunday and Monday of this week, 432 persons arrived in South Florida. Under the Administration's proposal, that many more will be free to arrive this weekend, and next weekend, and the weekend after that. I think the Administration could have taken immediate steps to deal with the South Florida crisis under existing law. But it did not. As for the Administration's approach to the longer term national problems, once again, I'm glad that they have come up with some proposals. But I think that the proposals contain fundamental flaws, flaws which must be fixed if we are serious about having an effective long-term immigration policy.

First, I'd like to talk about the crisis in South Florida, and about the effect the Administration's proposals have on the situation

there. For most Americans, immigration is an abstract problem that simply doesn't affect their daily lives. The people of South Florida have to live with this problem every day. I recognize that this Administration inherited the problems in South Florida. They are problems created by the previous Administration. So when this Administration first came into office, we all knew that it would take them some time to get their feet on the ground. But as the weeks and months dragged on, as the delays piled up and the situation in South Florida grew worse, I like other Floridians, became frustrated and began to lose my patience. Unfortunately, there's little in the Administration's plan to relieve the frustrations of the people in South Florida.

There are two big concerns facing South Florida today: first, stopping the flow of illegal aliens, and second, doing something about the INS processing center at Krome North. I don't see anything in the President's proposals that provides immediate relief in stopping the daily flow of boats to South Florida. What I had hoped to see in the President's package were announcements of actions to be taken immediately to stop the flow.

Instead of proposing legislation to interdict incoming boats filled with undocumented aliens, why not use the authority that already exists in interdicting boats today. The Coast Guard presently has the authority to intercept and seize boats in our own waters, extending out to three miles. Further, the Coast Guard already has the authority to intercept U.S. flag vessels or non-flag vessels on the high seas. Why doesn't the Administration act? 91 percent of the American people want illegal immigration stopped. A majority of the Senate joined in a letter to President Reagan assuring him of support in adopting strong enforcement measures to stop illegal immigration. I support a policy of interdiction now -- not two or ten months from now.

The Administration proposes to seek Haitian cooperation in restraining illegal emigration, and the acceptance of the return of Haitians who have entered our country illegally. I support that and again would urge that this proposal be put immediately into effect. I have an amendment to the foreign aid authorization bill that might further prod the Haitian Government into acting to halt the illegal

trafficking of people. The amendment requires a Presidential determination that Haiti has cooperated in halting illegal emigration; has not aided, abetted or otherwise supported illegal emigration; has provided assurances it will cooperate fully in implementing U.S. development assistance programs in Haiti, and is not engaged in a consistent pattern of human rights violations, or aid will be cut off.

Many of the Haitians, and other aliens who arrive on South Florida's shores are taken to an INS holding facility pending the outcome of their exclusion hearings. That facility, an old military installation, is call Krome North. Krome North, as much as anything else, has come to symbolize the failure of immigration policy in South Florida.

Krome North has an official capacity of no more than 800 persons. Yet, there are usually twice as many persons -- in excess of 1,600 -- being held at Krome at any one time. The sewer and water systems do not always function, creating unsanitary conditions and a public health hazard. Last month, someone in the Federal government came up with a unique solution to solve the overcrowding at Krome North. One night, one hundred Haitians were told that they were free to leave the Krome site, to re-unite with their families. Each person was given a quarter, to make a phone call. The catch was - a lot of those people didn't have any family or relatives to go to. They were simply turned out on the streets, uneducated peasants with no money and who cannot even speak English. Later, INS claimed that it has made a mistake. This extraordinary action -- and the complete lack of responsibility it stands for -- typifies, in the eyes of the people of South Florida, the Administration's approach to the problem of refugees and immigration policy.

Just two weeks ago, Bob Graham, the Governor of Florida, filed a lawsuit against the federal government seeking to close Krome North because of the health and safety danger it poses, and that new processing facilities be established in other States. I urged him to file that law suit. He has an obligation to protect the health and safety of the citizens of South Florida, and it was clear that the Federal government was not meeting its responsibility to carry out the immigration laws.

The Administration's proposal tells us that its considering new sites for these processing centers. In fact, they say they've set aside $35 million in next year's budget for processing centers. That may sound good on the surface, but we've been hearing about studies for new sites for almost a year

now. What we did not hear was, "Today, I am opening a new processing center." New processing centers need to be opened immediately, and next year's budget wouldn't take effect until October 1st. Its simply unfair to expect Florida to bear the entire brunt of this problem. Of course, I was glad to learn last week that the government had reached an agreement to relocate 800 Haitians to Fort Allen in Puerto Rico. But in South Florida, we're seeing hundreds of persons arrive every week, and this new facility would only help for a couple of weeks. What we need now are several more facilities, with enough capacity to handle the people who are in South Florida already. I was interested to note that the Federal government had reached an agreement with the Governor of Puerto Rico that no more than 800 persons would be relocated in Puerto Rico. I would like to see the federal government make that same kind of agreement with the Governor of Florida.

One of the most nagging problems facing us in the aftermath of the Mariel boatflow is the issue of Cuban criminals. I think the Cuban criminals should be sent back to Cuba. The administration has said they will pursue international measures to secure the return of those Cubans found to be excludable under United States law. I support that. But I admit to being a little confused when a Justice Department press release crosses my desk announcing the creation of a panel to review the status of 1,824 Cubans who are currently in the federal penittentiary in Atlanta, Georgia and at three other locations. The panel is to recommend release of the prisoners based upon whether (1) the detainee is currently non-violent and is likely to remain so, and (2) he is unlikely to commit any criminal offenses if released. What they're talking about is a resettlement program for Cuban criminals.

The people of South Florida know about crime in the aftermath of unregulated immigration. It's hard to imagine sitting here in Washington just how serious the crime situation is in Dade County and elsewhere in the State. In tracing statistics of major crimes committed beginning April 1, 1980 and following through the year, there is a dramatic increase in all categories. In one neighborhood of Miami there was over a 100% increase in homocides, over 300% increase in rapes, and over a 350% increase in armed robbery. For the city of Miami there was a 100% increase in homicides from 1979 to 1980.

The Mariel Cubans are also the victims of crime. In a recent article, the Miami Herald found that murder was the biggest cause of death among the

Mariel refugees, with 90 homicide victims as of last month. That accounts for fully 62 percent of the total deaths of those who came from Cuba las year. The INS has the responsibility for taking custody of illegal aliens who have been arrested by local law enforcement officials. In fact, this responsibility was set forth in writing in an agreement between INS and the Miami Police Department. Yet the Police Chief of Miami reports that in the past, INS has not honored its agreement, and has refused to take custody of aliens who have been arrested. Today, South Florida has a critical shortage of jails, prisons, police officers and judges; federal judges have ordered state officials to release 2 prisoners for every person who is sent to jail. It is also confronted with a massive illegal drug trade, and all the crime and violence that brings with it. What's the result? Earlier this year, Atlee Wampler, the U.S. Attorney for South Florida, summed up the situation in a letter to the Justice Department. He said - - - and I quote - - - "The administration of justice in South Florida is on the point of collapse. An influx of 20,00 to 40,000 new illegal aliens will cause a total collapse of the system of justice in South Florida." Since Mr. Wampler wrote that letter, over 11,000 illegal aliens have arrived on the shores of Florida.

When you talk about mass asylum, you have to talk about the financial costs involved. I believe that the federal government should reimburse the states which are impacted by large numbers of aliens. State and local governments should not have to bear the burden of a policy or non-policy that was made in Washington. I'm glad to see that the Administration has proposed the continuation of categorical refugee benefit programs but I am concerned with proposed reductions in the levels of cash assistance payments to the many refugees who do not qualify for welfare programs.

The continual stream of illegal aliens into South Florida, the aftermath of the Mariel boatlift, and the situation at Krome North have stretched the already overburdened resources of the INS in South Florida to the breaking point.

The INS office in Miami has had to re-assign 11 of its officials from their normal duties, and detail them to Krome North. In addition, 32 other INS officials from offices around the country have been re-assigned to Krome North. Yet this holding center remains woefully understaffed.

In the Miami INS office, there are a total of 38,000 administrative cases and applications pending. The Miami INS office can process about 100 applications and cases a day. Now, early each evening, people with sleeping bags begin lining up in front of the INS office. They will spend the night on the sidewalk, so that they can get one of the 100 places for the next day. There are reports of people selling their places in line, like ticket scalpers at a big football game. INS estimates that it would take the entire current staff, plus eight additional people, an entire year of full time work just to clear out the current backlog. And hundreds of people continue to arrive each week.

It is clear that we need to increase the budget of INS, and hire more INS personnel both in Florida and across the country. Otherwise, we won't be able to enforce our immigration laws.

The adiminstration has proposed what amounts to a $15 million increase in the INS budget, and a cut of 781 authorized positions in INS. The stated budget increase of $40 million is misleading. Earlier this year, this Administration cut the INS budget request by some $25 million. In addition, Congress has already taken steps to restore the amount the Administration wanted to cut originally. All in all, this budget increase does not show much of a commitment to better enforcement of our immigration laws.

The staffing increases proposed by the Administration are misleading, too. Earlier this year, this Administration proposed cutting 1,355 authorized positions in the INS. They also refused a request that I made to exempt INS from the Federal hiring freeze. So, when the Administration says its adding 564 slots at INS, what it really means is that it is no longer eliminating as many slots as it planned earlier. Today, many of the authorized slots in INS are unfilled. So at best, the Administration's proposal means that there will be no layoffs at INS. It's not a commitment to hire more people. Once again, Congress has already taken steps to make sure that the Administration's original INS staffing cuts would not take effect. In the Justice Department Authorization bill, the Judiciary Committee restored 360 of the positions the Administration has planned to cut. I have offered a floor amendment to that bill that would restore an additional 714 positions. And, I'm pleased to say that both Senator Huddleston and Senator Hawkins have joined me as co-sponsors of my amendment. In the final analysis, I'm relieved that

the Administration has backed away from its earlier proposal to make massive cuts in INS staffing levels. But the staffing increases do no represent the kind of commitment we need if we're serious about enforcing our immigration laws. They do little or nothing to eliminate the personnel shortage in South Florida.

Mr. Chairman, I would like to shift now, and comment on several aspects of the Administration's plan that affect our long-term national immigration policy. Earlier this year, I joined with Senator Huddleston in introducing a bill to reform our immigration laws, and establish a national immigration policy. We need that policy, because it has become clear that we don't have an immigration policy today. The message is: "It's alright to come to the United States illegally. You won't get caught and you will be able to get a job. Even if you do get caught, you will be able to tie up any deportation hearings for years." It's this lack of policy that has created the situation in South Florida today. My top priority is doing something -- and quickly -- to solve the South Florida crisis. But unless we change the message we're sending out today, unless we get effective new policies in place, we run the certain risk of future situations like South Florida. In order to avoid that, we need to change the message that we're sending to other countries. That message should be: "You can come to American, but only if you comply with American immigration laws and procedures. Don't try to come to the United States illegally. If you do, you will probably get caught at the border. In any case, you won't be able to get a job, and you will be deported if you try."

The Administration has made proposals that will give us a policy, and start to move us towards the goal of sending out that message. But I'm afraid that there are fundamental flaws in the Administration's proposals.

As a blueprint for long range solutions to our immigration problems, I believe that the Administration's policy does not go far enough. The President calls for increased quotas, but his proposal contains no cap on the total number of immigrants and refugees who enter each year. I believe that settting a cap is critical in regaining control of our immigration policy. The Huddleston bill before this Committee sets a cap at 350,000 - a very generous figure, I believe.

Second, the Administration proposes that it be made unlawful to hire illegal aliens. But to enforce that law, the Administration has come up with a patchwork approach that will prove difficult for employers and employees alike. They are proposing that an employer may request from a job applicant immigration papers, or other documents generally used in this country for identification purposes. In addition, the employer and employee would sign a form certifying that the new hire is eligible to work in the United States. I believe employers will find this approach to be a paperwork nightmare, and job applicants may become the victims of discriminatory treatment.

I continue to support the issuance of a gradually phased in program that would result in the issuance of a new and more secure employment Social Security card. The new card, to be presented to the employer, would have a unique identifying element such as a serial number or code.

Finally, as a long range measure in dealing with our immigration problems, we should talk about amnesty only after we have stopped the flow and sealed the border. Everytime you start talking about amnesty, you only increase the flow.

Mr. Chairman, in closing, I would like to turn back to the situation in South Florida. There's a new bumper sticker that you see on more and more cars in the Miami area. It says: "Will the last person to leave, please take the flag with him?" Now there's a pretty ugly feeling behind that bumper sticker, a feeling run counter to the natural sentiments of all American people. But it also tells a lot about the frustration and hopelessness everyone in South Florida feels these days. And the root cause of that frustration, and of the tensions it creates, is the failure of the Federal government to do anything to solve the situation that its lack of policy created. Now this is a country of immigrants. All of us, except for the Indians, came to the United States from other countries. But unless we have some sort of immigration policy, our ability to continue as a nation is threatened. The crisis in South Florida, the breakdown of our immigration laws, and the tensions this crisis has created, could occur elsewhere. We can prevent that from happening again, but only if we move now.

Thank you, Mr. Chairman, for allowing me to testify.

U.S. ATTORNEY, SOUTHERN DISTRICT OF FLORIDA,
Miami, Fla., January 23, 1981.

Senator LAWTON CHILES,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR CHILES: This letter is a request for you to actively lobby the Legislative and Executive Branches of the federal government to take a strong position with the Bahamian government to prevent 40,000 undocumented Haitian aliens from fleeing the Bahamian alien roundup to South Florida.

I was told in the waning days of the transition of administrations that the former administration's State Department did not want to take a strong position with the Bahamians because they did not want the United States government to be perceived as barring black aliens while "accepting" Cuban aliens.

If that statement of the State Department policy is true, the policy is ridiculously irrelevant to the impending disaster in South Florida if such a mass illegal immigration takes place.

Attached is a copy of my memorandum to the former Attorney General on this dangerous problem.

Please use the memorandum to lobby your colleagues and the new administration to stop this illegal immigration on Bahamian territory.

Sincerely,

ATLEE W. WAMPLER III.

Enclosures.

U.S. ATTORNEY, SOUTHERN DISTRICT OF FLORIDA,
Miami, Fla., January 15, 1981.

Hon. BENJAMIN R. CIVILETTI,
Attorney General of the United States,
Washington, D.C.

DEAR MR. CIVILETTI: This letter urgently requests the United States Department of Justice to request the State Department to take more aggressive action in its negotiations with the Government of the Bahamas to prevent illegal mass immigration of undocumented Haitian aliens from the Bahamas. Specifically, the State Department should be requested to require the Bahamian Government to cooperate with the United States Government to seal off a Western escape route to the United States by the Haitian aliens by allowing the United States Government to create a staging area in Bahamian territory or territorial waters from which the Haitian aliens can be processed and returned to Haiti; to assist in the dissemination of information that only Haitians with valid visas from American Consulates will be allowed in the United States and all others will be incarcerated and excluded or deported to Haiti as soon as possible upon arrival; and to authorize the highseas boarding of Bahamian vessels proceeding to the United States and the return of undocumented Haitians to Haiti. To this end, the State Department should be prepared to cut off air and sea travel to the Bahamas of vital tourist trade and traffic until the Bahamas agree to permit such a staging area or presents some reasonable alternative plan to protect the United States from uncontrolled mass illegal immigration of Haitian aliens from the Bahamas to the United States.

Additionally, the Department of Justice should direct the Immigration and Naturalization Service to place in detention camps all Haitians who are brought into the United States from the Bahamas while asylum claims and exclusion proceedings are in process.

SITUATION

The Bahamian Government has declared that on January 18, 1981, those Haitian illegal immigrants remaining in the Bahamas will be subject to deportation to Haiti. Conservative estimates indicate 20,000 to 40,000 persons will be affected. Prior experience with the Bahamian crackdowns on illegal immigrants demonstrated that, rather than allowing themselves to be returned to Haiti, the Haitian illegal immigrants fled the roundup and went to the nearest higher standard of living landmass, South Florida.

I have been informed that the State Department efforts to have the United States Coast Guard and Immigration Service prevent westward flow of the illegal Haitians from the Bahamas were rebuffed by the Bahamian Government which refused to allow the United States to return Westward fleeing Haitians to a Bahamian holding area, and refused to allow the Coast Guard to board Bahamian vessels headed toward the United States with illegal Haitian immigrants. I was told that the

Bahamian officials made fun of the "silly" predicament of the United States in its inability to quickly exclude illegal aliens due to its system of justice.

The situation is clearly a willful and wanton disregard of the economic welfare of a friendly nation state posing an immediate critical economic and law enforcement threat to South Florida.

The administration of justice in both the state and federal governments in South Florida is virtually collapsing from burgeoning crime rate and limited resources. South Florida has a critical shortage of: policemen per capita of the citizenry; firemen, jails and prisons; judges; prosecutors; and probation officers, as well as housing; water supply; sewage facilities and other public services. South Florida has: seventy percent (70 percent) of the nation's cocaine, methaqualone and marijuana importation; four (4) of the nation's top ten cities in major crimes per capita; the highest murder rate per capita in any metropolitan area of the United States; and serious racial tensions between unemployed ethnic and national origin groups. City, county, state and federal public employees are physically and emotionally exhausted from coping with the May riots and the flood of Cuban refugees, and see no end to the undermanned, herculean administrative and law enforcement tasks they must perform. Federal Judges have ordered state officials to release two prisoners for each state arrestee to reduce overcrowded prison populations. Assistant State Attorneys are resigning in the face of around-the-clock street crime prosecutions with no time for courtroom preparation. Ninety three percent (93 percent) of the state cases are plea bargained away encouraging recidivism. In a brief statement, the administration of justice in South Florida is on the point of collapse. An influx of 20,000 to 40,000 new illegal aliens will cause a total collapse of the system of justice in South Florida.

OPTIONS

At a recent meeting of Department of Justice officials and representatives of the Immigration and Naturalization Service, four possible options were discussed:

1. Induce the Bahamians to take a responsible position allowing the United States Government to prevent Westward flow of illegal Haitian aliens by designating an alien roundup point at which aliens can be detained prior to deportation to Haiti.
2. Order U.S. Coast Guard to board Westward fleeing vessels carrying illegal Haitian aliens and transport such aliens directly to Haiti.
3. Channel Westward fleeing Haitian illegal aliens to a control point on the United States shore. Begin immediate exclusion proceedings.
4. Dispatch anti-smuggling teams throughout the coast opposite the Bahamas to seize random arrivals of illegal Haitian aliens from the Bahamas.

The State Department should be requested to impose diplomatic and economic sanctions if necessary to secure the acceptance of the first option by the Bahamian Government.

Options two through four are too dangerous to human life, or too costly to the United States Government taxpayer and will destroy the system of justice and social order in South Florida. The cost of maintaining refugee camps and monitoring relief services during the recent Cuban boatlift is a forecast of the multimillion dollar cost to the United States taxpayers if these Haitian aliens arrive in the United States. Even if we formulate and announce a tough immigration policy, once the aliens are in the United States, exclusion proceedings may take two years requiring extremely costly detention.

The Bahamas are acting irresponsibly toward a sister nation. Such reckless and wanton disregard for the adverse economic impact on the United States should be met with economic sanctions. The Bahamas depend on the tourist trade at this time of year. If they create a situation which sends 20,000 to 40,000 illegal Haitian aliens to South Florida, we should encourage their cooperation by blocking air and sea traffic to the Bahamas until they take a reasonable position to prevent the breach of our laws.

RECOMMENDATION

I earnestly request that you direct appropriate officials of the Department to communicate these concerns to the State Department, and that efforts be made at the highest levels of government to secure a more aggressive policy by the State Department in this critical area.

Sincerely,

ATLEE W. WAMPLER III.

DEMOCRATIC STEERING COMMITTEE,
January 27, 1981.

Hon. ALEXANDER M. HAIG, Jr.,
Secretary, Department of State,
Washington, D.C.

DEAR MR. SECRETARY: This is to request your immediate attention to preventing a massive new influx of Haitians and Cubans to the United States. Recent reports on the direction taken by the United States Government in negotiations with the Bahamian Government and with Cuban authorities are of great concern to me and to the people of my State.

The top federal law enforcement official in south Florida has been in contact with the U.S. Attorney General to relay the serious and potentially explosive situation in Florida, particularly in Dade County, due to unregulated immigration. The enclosed letter written by Atlee W. Wampler III, the U.S. Attorney for the Southern District of Florida was sent in response to the situation in the Bahamas where Bahamian authorities have begun the exclusion of Haitians from their territory. I agree with Mr. Wampler that the United States should take a firm stand with the Bahamian Government that the exclusion should be conducted in a way that will not result in the westward flow of Haitians.

In the case of ongoing negotiations with the Cuban Government, I have been concerned by reports that the United States is tying the return of hard-core Cuban criminals to U.S. acceptance of anywhere from 25,000 to 100,000 more Cubans. I firmly believe that the return of criminals to Cuba should not be contingent on our agreeing to accept a certain number of additional Cubans. I believe that family reunification is a separate issue from the return of criminals, and to tie them together is dealing once again on terms set down by Cuba.

I would hope that our government has learned from the mistakes of the past ten months in its handling of the unregulated flow of aliens to our country. I am less concerned, however, about fixing blame for past mistakes than I am about trying to prevent new ones. I would urge you, Mr. Secretary, to take immediate steps to prevent the unregulated influx of Haitians and Cubans to our country. I stand ready to work with you and your staff in any way that you feel I might be of assistance toward that end.

Most sincerely,

LAWTON CHILES.

[From the Miami Herald, May 31, 1981]

VIOLENT DEATH STALKS THE BOATLIFT REFUGEES

(By Helga Silva and Carl Hiaasen)

Jorge Rodriguez and Jose Batles sat two or three barstools apart as the clock moved toward midnight last March 27 at the smoky El Centro Matancero tavern.

Both men had come to Miami aboard a boat from Mariel, and they were good friends. Jorge worked construction, when there was work. Jose unloaded vegetables at a market on NW 12th Avenue.

Their beers were on the counter a few minutes past 12 when a killer walked through the bar and fired a bullet into the same spot in each man's neck. By the time Miami detective Andrew Sundberg got there, the Matancero "looked like a morgue."

Twenty-two blocks away, Fernando Fuentes and Maria Esther Penton were riding in a car together. Both had come to the United States in the boatlift. He had been plucked suddenly from a Cuban prison; she had sought refuge in the Peruvian Embassy compound in Havana.

Their love affair ended at the corner of NW 7th Street and 17th Avenue when a man with a submachine gun pulled alongside Fuentes' car and took aim.

He held the trigger for a long time. Maria was hit 10 times, Fernando six. Twenty-two shells from .45-caliber hollow-point bullets were found on the pavement

Death came to these new refugees within a 37-minute period, the bloodiest moments since the Mariel boatlift ended. Hardened Miami homicide detectives added to their wall-sized murder scoreboard four more names, each bearing a red letter R, for refugee.

Dade County's Mariel refugees are dying violently in increasing numbers, and they are being killed at a pace that dramatically outstrips the homicide rate for the general population.

Since the Mariel-to-Miami boatlift delivered the first refugees to Key West in April 1980, the homicide toll for Dade's *marielitos* has reached 90.

According to the FBI, that is more people than were murdered all last year in Fort Lauderdale, Orlando and St. Petersburg—combined.

"It's mind-boggling. An astronomical number," says Dade Chief Medical Examiner Dr. Joseph Davis, whose office performs autopsies on all county homicide victims.

In recent months, Davis and his staff have come to recognize the typical Mariel victim: a slender male in his 20s or early 30s, dead from multiple gunshot wounds, stripped of his few belongings, often covered with elaborate jailhouse tattoos from years in Cuban prisons.

Juan Jose Toledo was the first casualty. On May 25, 1980, less than a month after his arrival, the mentally disturbed 32-year-old refugee was shot as he attacked a Miami policeman with a razor blade outside an Opa-locka health clinic.

Felipe Alba was the most recent to die.

On May 21 of this year, he was gunned down in an alley at 1144 SW 8th St. Like most of these cases, Alba's is unsolved.

Many of the estimated 90,000 Mariel refugees now in South Florida have settled in Miami, and that is where most of the homicides occur. Miami homicide Sgt. Ernie Vivian says that 36 of the city's 113 victims so far this year were Mariel refugees.

And in the Mariel cases in which arrests have been made, Vivian says, the defendants usually are other boatlift arrivals. Twenty-four refugees have been arrested this year in connection with 18 Miami homicides.

"Mariels kill each other," Vivian says. "If we didn't have them, our murder rate would be down by one-third."

"Let's face it, the sudden upsurge of homicides in this community is not within the native population," Davis concurs.

Statistics compiled for the 12-month period ending March 31 indicate that a Mariel refugee in Dade County was five times more likely to die in a homicide than a person in the general population. The killings reflect no pattern beyond the familiar deadly denominators of alcohol, handguns and passion:

Nancy Balbuena, 23, shot four times by her husband when he found another man in their house, was one of 11 refugees slain during domestic quarrels. Police say that family fights are probably at the root of many more unsolved cases.

Pedro Morales was confronted by police after spraying a Flagler Street lounge with gunfire, robbing the patrons and ordering an employee to stack three cases of Heineken beer outside—to go. Morales, 33, was hit by police gunfire, one of 12 Mariel refugees killed while committing a crime.

Luis Acuna, a diminutive 28-year-old clerk who was shot during a holdup at the U-Tote'm store where he worked, was one of five Mariel arrivals killed as robbery victims.

Carlos Valcalzel, 25, was gunned down in front of Milano's Bar after arguing with another man. Police found Valcalzel's toy gun nearby and $4 in his pocket. He was one of 27 Mariel refugees killed at or near a Dade County bar. Among the 90 Mariel victims, Valcalzel was one of 41 who had been drinking before their deaths. Thirty-two of the victims had no alcohol in their blood; in 17 cases, the results of alcohol tests were unavailable.

Benjamin Quintana was found floating off Watson Island with 25 cents in his pockets, two bullet holes in his chest, teeth marks on his right shoulder and a tattoo that said: "*Solo soy un veneno*"—I am only poison. Quintana's is one of at least 33 Mariel homicides for which police have not yet found a motive.

MIXTURE OF CAUSES

The causes seem a mixture of frustration, idleness, criminal enterprise and cultural confusion, particularly among those abruptly uprooted from Cuban prisons and transplanted here.

"Dealing with freedom and choices is not easy, especially for those who have lived through long periods of confinement," explains Maria Valdes-Beola, a psychologist who counsels new refugees at the Miami Mental Health Center.

"The level of frustration is high when they are seeing overabundance in which they don't participate," she says. "They feel marginal to society—because this society has made them feel marginal—and of course also marginal to its laws."

The result is often a fatal emotional eruption. The Mariel caseload has climbed so steadily in the last year that now, in an average week, at least two refugees are killed.

"The biggest problem is getting data on the origins of these people," Dr. Davis says.

Fernando Fuentes came from prison—at the behest of Cuban officials who put him on a boat in Mariel harbor. His stepfather, Manuel Martinez, says Fuentes was serving 12 years for trying to escape from the island in a homemade raft.

After a stay at Fort Chaffee, Fuentes came to Miami. He had trouble getting work until his stepfather advised him to stop telling prospective employers that he was a *marielito*. Soon he got a job at a garage.

"He was quiet. I didn't know of any enemies," Martinez says. "I hope they apprehend whoever did this."

Police say there are no leads so far. And new cases are piling up.

THE HOMICIDES

Figures prepared by the county manager's office report that 57 Mariel refugees were killed in homicides between April 21, 1980, and March 31, 1981. However, a survey of autopsy files and police records by Miami Herald reporters found that at least 72 Mariel refugees were stabbed, shot or beaten to death during that 12-month period—a figure that represents 14.6 percent of all homicides in the county.

In fact, more Mariel refugees died of gunshot wounds than of any other cause during their first year in this country. Of the 116 total Mariel deaths from all causes recorded by March 31, 62.1 percent were homicides—a bleak contrast to the general county population, among whom homicides account for only about 12.2 percent of all deaths.

Of the Mariel victims, 56 were white and 34 were black.

For police, the cases are enigmatic, "Whodunits," the detectives call them: a body in a roadway, in an empty bar or dumpted in a rural field. Frequently the refugee victims have no family here, and they often have been rejected or estranged from the sponsors who claimed them.

Homicide victim Juan Bermudez, for instance, was sponsored by another Mariel refugee, Roberto Cardenas Morales. Cardenas met Bermudez at Miami International Airport last summer, brought him home briefly, then dropped him off at the headquarters of a local exile organization.

After that, Cardenas heard nothing from Bermudez until Medical Examiner's Office called in November.

Often it takes days just to identify the body; at least one Mariel homicide victim is still marked as "unknown remains"—or, in police parlance, a "Juan Doe."

FEW WITNESSES

Trying to solve the crimes can be like working in a vacuum. "Mariel witnesses are few and far between," says Miami Detective Bill O'Connor. "The phones don't ring off the walls with tips."

There are few anxious friends and relatives to help police or press for a lengthy investigation. In one case, the Mariel victim's U.S. sponsor gave police a phony address and telephone number.

Even when detectives identify a suspect, they often cannot determine a reasonable motive for the killing. Police say drug disputes account for only a few of the Mariel homicides; more common is the simple drunken argument.

Juan Bermudez had gone drinking with two other Mariel refugees Nov. 14 after losing a night-watchman's job at a construction site. His friends, Angel Palli and Carlos Campanioni, told him he should ask for the job back. Bermudez said no. The three men argued loudly at a Wag's Restaurant on Kendall Drive.

Then, according to Metro detective Debbie Wiley, Palli and Campanioni took Bermudez down a remote dirt road and faked engine trouble in their car. When the refugee bent over to look under the hood, Campanioni shot him several times in the head and threw his body into a brackish waterway.

Police say Campanioni was caught when he casually told Bermudez' former employer that Juan was "bathing in the canal."

"How cold-blooded can you get?" Wiley says. "There was no black-and-white motive. The guy just kept saying that Juan should have gone and asked for his job back."

THE FEUDS

The motives for some killings can be traced to old feuds. One refugee was stabbed to death by his former cellmate from Cuba. "A lot of the refugees carry grudges over from Cuba, and they are settling them here," says Miami Detective Hector Martinez.

"The *marielitos* are considerably less sophisticated than the Colombians," he adds. "They'll use sticks, knives, Saturday-night specials, anything they can get their hands on."

"You kill whomever you associate with, and that's why they're killing each other," says Dr. William Wilbanks, criminology professor at Florida International University.

Not all the victims were ex-prisoners, luckless lovers or heavy drinkers.

Roberto Ruiz was 17, the youngest Mariel homicide victim. His home in the United States was a barracks at Opa-locka Airport. His older brother, another boatlift arrival, was awaiting release from the refugee center at Fort Indiantown Gap, Pa. He and Roberto planned to start a business together.

"He had a vision of going to work, making lots of money and sending for his mother in Cuba," says Francisco Garcia, who was administrator of the program for young refugees at the airport. "If any one of those kids would have made it, it would have been Roberto."

But on the night of Sept. 14, Roberto Ruiz joined a group of other young refugees who sneaked out of the barracks. The next time Garcia saw the teenager was on an autopsy table.

Ruiz had been shot in the abdomen and wrist by a homeowner who surprised six refugees as they burglarized his house. Ruiz lurched out of the house and fell dead at the corner of Baghdad and Jann Avenues. Roberto's brother flew down for the burial.

This year has brought many funerals for new refugees. Jorge Rodrigues and Jose Batles, the friends who died over drinks, were buried in Our Lady of Mercy Cemetery.

Fernando Fuentes and Maria Penton, slain that same night, were buried side by side at Woodlawn Park. Maria's only known relative in the United States did not learn of the young woman's death until a reporter called last week.

"This terrible," gasped Carmen Castro, wondering aloud what will happen to Maria's two young children, who were left behind with her first life in Cuba.

III

AMENDMENT NO. 110 Calendar No. 118

Purpose: To restore proposed cuts in the staffing funds of the Immigration and Naturalization Service.

IN THE SENATE OF THE UNITED STATES—97th Cong., 1st Sess.

S. 951

To authorize appropriations for the purpose of carrying out the activities of the Department of Justice for fiscal year 1982, and for other purposes.

July 8, 1981

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. CHILES (for himself, Mr. HUDDLESTON, Mr. BENTSEN, Mr. KENNEDY, Mr. LEVIN, Mrs. HAWKINS, and Mr. HAYAKAWA)

Viz:

On page 10, line 15, strike "$377,067,000" and insert in lieu thereof "$391,368,000".

III

AMENDMENT NO. 111 Calendar No. 118

Purpose: To establish a detention facility for aliens seeking asylum in the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES—97th Cong., 1st Sess.

S. 951

To authorize appropriations for the purpose of carrying out the activities of the Department of Justice for fiscal year 1982, and for other purposes.

July 8, 1981

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. CHILES

Viz: At the end of the bill, add the following:

ASYLUM PROCEDURE AND FACILITIES

SEC. 20. (a) Section 208 of the Immigration and Nationality Act is amended—

(1) by inserting "(1)" immediately after "SEC. 208. (a)";

(2) by inserting before the period at the end of subsection (a) the following: "and if such alien establishes the acquisition of such refugee status which is based on facts existing before his departure from his country of nationality or, in the case of an alien without nationality, before his departure from a country in which he last habitually resided"; and

(3) by adding at the end of subsection (a)(1) the following:

"(2) For purposes of any proceedings under this Act to exclude or deport an alien from the United States, no alien who is seeking or applying for asylum in the United States shall be deemed to have entered the United States unless lawfully admitted to the United States in accordance with the express terms of this Act.".

(b)(1) Not later than one day after the date of enactment of this Act, the Attorney General, after consultation with the Secretary of State and the Secretary of Health and Human Services, shall establish a facility in a State not having such a facility for the detention of aliens seeking asylum in the United States until the conclusion of hearings for the exclusion or deportation of such aliens. Such facility shall be of sufficient capacity to accommodate all aliens seeking asylum on or after the date of enactment of this Act and all aliens not adequately accommodated at such a facility in existence on the date of enactment of this Act.

(2) For purposes of this subsection, the term "State" shall be deemed to include a State, the District of Columbia, Commonwealth, territory, possession, or military base of the United States.

Senator SIMPSON. And I would now introduce Senator Dee Huddleston. If there has been one voice speaking during these last 2½ or 3 years it is Dee Huddleston. He has been presenting this issue persistently before the U.S. Senate. Those of us who were on the Select Commission on Immigration an Refugee Policy did not feel that we could get involved in that debate at that time, but we certainly are ready to do that now.

He has also presented a piece of legislation which will be very seriously considered by this subcommittee, I assure you. So Senator Huddleston, please proceed.

STATEMENT OF HON. WALTER D. HUDDLESTON, U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator HUDDLESTON. Thank you very much, Mr. Chairman. I want to commend you and the entire Subcommittee for the manner in which you are pursuing this very difficult, very complex, almost intractable subject of the immigration and refugee policies of the United States. I have great confidence in you because of your great depth of knowledge, understanding, and wisdom, and also that of the ranking minority member, Senator Kennedy, knowing his long interest and concern in immigration and refugee policy.

I would just say at the outset that I appreciate the brief appearance that I was permitted yesterday, and I do not want to indicate from those remarks that my total attitude toward the administration's proposals that have been submitted are negative. I think there are a lot of positive things in the proposal that the administration has put forward, and I would hope that it will be given full consideration along with the provisions of the bill that I along with Senator Chiles and other colleagues have introduced, Senate bill 776.

I am also happy to join my colleagues from Florida, and it appears that I may be joining them in more ways than one inasmuch as the Immigration Service is now sending a number of your Haitian visitors to my State. We have there a facility of the Federal Government, a minimum security penal institution in Lexington. Some people have heard about this relocation and are expressing concern and some outright opposition.

While I am concerned about this action, that the nature of the facility taken into account, that it not be overloaded, that the people sent there are not security risks or present a danger to the community because of the minimum security feature of the facility—I am not going to raise these kind of objections, because I understand the plight of south Florida. I understand that this is a national problem. It is in fact an international problem, but we must deal with it from a national perspective.

I also understand the problem that INS has. And I want to say right now that there is probably no more maligned organization in this country, unfortunately than the INS. It has been neglected by the Congress, it has been neglected by a whole procession of national administrations. However, INS is doing the best it can in a very difficult, difficult situation. News media reports that constitute nothing more than cheap shots at INS are not getting at the real problems that we are confronted with in immigration and refugee policy.

Mr. Chairman, I understand this portion of your hearings has been designated for the mass asylum question and I will confine my remarks to that and be as brief as I can. I would ask that a longer statement be submitted for the record. And while, as you know, I have a good many views about every aspect of the bill, I will speak principally on this issue.

Senator SIMPSON. Your statement will be accepted.

Senator HUDDLESTON. Mr. Chairman, I think that there are several basic questions that are involved here. One is, does America as a sovereign Nation have the right to determine which individuals are permitted to come to this country and what procedures are established as far as their becoming accepted and integrated into our society. I think the answer to that is obviously yes.

The second question is, how do we accomplish this within our constitutional framework, within our traditions of being generous and compassionate toward people of a less fortunate station, and within our belief in the dignity and value of every human life. It gets a little harder to answer that the previous question and that is what we are confronted with at the present time.

There are several major concerns that I have tried to deal with in our bill. One is whether or not we can, in determining whether a person is a legitimate asylee or refugee, establish that the fear of persecution is based on conditions that existed before the individual left his country.

Being able to claim that once he is here that the very fact he left provides him with a well-founded fear is a large loophole and it is being used very successfully in the exclusionary proceedings that are taking place. We have got to in our definition divide whether or not he can continue to utilize this loophole.

We have in S. 776 a very strict construction of that requirement. However, in looking into it further, we have found that in some cases this may have excluded some very deserving type people. So I recommend that we modify that provision to say that the act of leaving would be a self-serving act on his part designed specifically for the purpose of achieving an asylee status and that therefore he ought to be excluded.

We leave flexibility in our modification so that if it can be demonstrated that there is a justification, the individual would not suffer. I think it is very important that we get into that kind of a definition and understanding in any new law.

Another question is when is a person in this country for the purposes of proceeding against him through exclusive proceedings. Can we develop a requirement that a person, for purposes of determining whether he is a legitimate refugee or asylee, has not really entered the country, although he is physically here, until he has gone through this process to determine whether or not he is legitimate? Can we say that he is still at the portals until these processes have been adjudicated? That would be essential in being able to deal with the kind of mass influx we have had.

I think it has been pretty well established that the due process procedures available to citizens of the United States do not necessarily have to be applied to those who come here in violation of our laws. The Attorney General suggested yesterday that the administration's approach would follow this line of reasoning.

Court cases, a number of them, have established that Congress has total authority to establish different procedures for aliens and citizens in the judicial process. I believe we ought to take advantage of this authority.

In regard to the question of have a well-founded fear of persecution; it seems to me we have got to make a distinction between being afraid of persecution and being afraid of punishment. A young man who leaves Vietnam to dodge the draft can certainly claim that if he goes back he is going to suffer some action by the government, just as our draft dodgers had a reasonable expectation that would have happened to them. It did not, but they had a right to expect that it would.

It is not, in my judgment, a legitimate question of persecution, if it is a law of the land and it applies to every person. At that point a person becomes a fugitive rather than a refugee and ought to be treated as such.

I think this is really one of the most important parts of any immigration policy. and it is one of the most abused parts. My colleagues from Florida have already indicated the kind of impact we can expect. It is not totally a new experience for us, because it happened in the first Cuban influx many years ago. But it is something that we can expect will happen again.

There is no guarantee that before this week is over we will not have, in addition to the Haitians, another influx from Cuba. There is ample evidence that the officials of Cuba consider this a foreign policy weapon against the United States. They already know that close to 2 million people want to leave that country. And, they know how many they want to get rid of. Public officials there have stated that it is not beyond the realm of comprehension that they would use this tool again.

We need to be prepared, and I commend the administration for submitting its proposal. I hope that the committee will very carefully consider it along with the one that is in S. 776.

Senator SIMPSON. Thank you. You always give much to us in the way of information, in your own very able way, and it is going to be very important to have you working with us. We hereby designate you as an ex officio member of the subcommittee, because you do have a tremendous depth of background and we are looking forward to having you share it.

Senator HUDDLESTON. Thank you, sir.

[The prepared statement of Senator Huddleston follows:]

PREPARED STATEMENT OF SENATOR WALTER D. HUDDLESTON

THANK YOU, MR. CHAIRMAN, FOR THIS OPPORTUNITY TO TESTIFY TODAY ON THE PROBLEM OF MASS ASYLUM WHICH WILL, IN ALL LIKELIHOOD, FACE US AGAIN IN THE NEAR FUTURE. THIS HEARING, AND OTHERS THAT HAVE BEEN SCHEDULED FOR THE COMING MONTHS, ARE WELCOME PROOF OF A NEW ATTITUDE TOWARD OUR IMMIGRATION PROBLEMS. I COMMEND THE CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE FOR THE LEADERSHIP THEY ARE DEMONSTRATING ON THIS VERY IMPORTANT ISSUE.

IMMIGRATION IS AN ISSUE ABOUT WHICH ALL AMERICANS FEEL STRONGLY, AND WELL THEY SHOULD. AMERICA HAS A PROUD HISTORY OF GENEROSITY AND HOSPITALITY TOWARD IMMIGRANTS, REFUGEES AND PERSONS SEEKING ASYLUM. BUT WE ALSO FACE AN UNPRECEDENTED ARRAY OF DIFFICULT PROBLEMS IN THIS COUNTRY THAT WERE NOT EVIDENT WHEN THE STATUE OF LIBERTY WAS ERECTED. WE CANNOT MOVE INTO THE 1980'S WITH THE IMMIGRATION, OR EVEN THE ASYLUM, POLICIES OF MANY YEARS AGO.

WE ALL KNOW THAT IT WILL NOT BE EASY TO MAKE THE TOUGH DECISIONS THAT ARE NECESSARY ON IMMIGRATION POLICY. BUT I HAVE THE CONFIDENCE THAT THIS SUBCOMMITTEE, UNDER THE VERY CAPABLE LEADERSHIP OF SENATOR SIMPSON, WILL CRAFT A POLICY THAT CAREFULLY BALANCES THE INTERESTS OF OUR CITIZENS AGAINST THOSE OF THE MANY IMMIGRANTS WHO WANT TO COME TO THIS COUNTRY.

TODAY WE ARE DEALING WITH ONE OF THE MOST CONTROVERSIAL ASPECTS OF IMMIGRATION POLICY. WHAT DO WE DO WITH LARGE GROUPS OF PEOPLE WHO APPEAR ON OUR SHORES, OR IN OUR MIDST, CLAIMING THAT THEY FACE PERSECUTION IN THEIR HOME COUNTRIES? MOST AMERICANS ARE TORN

BETWEEN FEELINGS OF ANGUISH AT THE PLIGHT OF THESE INDIVIDUALS AND RECOGNITION THAT OUR COUNTRY CAN NO LONGER AFFORD TO ACCEPT VAST NUMBERS OF THE WORLD'S HOMELESS.

THIS IS NOT AS NEW OR RARE A PROBLEM AS MANY LEADERS WOULD HAVE US BELIEVE. SENATOR HART TOOK THE FLOOR TO SPEAK ABOUT THE CUBAN SITUATION ONCE, SAYING THAT THIS IS "THE FIRST TIME AMERICA FOUND ITSELF THE COUNTRY OF FIRST ASYLUM FOR A LARGE GROUP OF REFUGEES." BUT THE DATE WAS SEPTEMBER 17, 1965, AND THE SENATOR WAS PHILLIP HART, SPEAKING ABOUT CUBAN REFUGEES OF THE EARLY 1960'S.

I AM NOT A NEWCOMER TO THESE DEBATES, AND I HAVE HEARD MANY TERRIFYING AND HEART-RENDING STORIES FROM POTENTIAL IMMIGRANTS. DURING THE LAST NINE YEARS, I HAVE WATCHED WITH A GREAT DEAL OF DISMAY AS EFFORTS WERE MADE TO ACCOMMODATE ALL OF THOSE WITH DETERMINATION ENOUGH TO REACH OUR SHORES. AND I HAVE WATCHED THE TRUE GRIEF OF THOSE VALIANT FIGHTERS FOR FREEDOM BEING OVERSHADOWED BY THE GROWING MASS OF CLAIMS OF ECONOMIC HARDSHIP AND HARSH LIVING CONDITIONS.

WE HAVE DELUDED OURSELVES INTO THINKING THAT EACH NEW CRISIS IS UNIQUE, THAT EACH GROUP OF REFUGEES, WITH HOWEVER FLIMSY A CLAIM TO POLITICAL STATUS, WILL BE THE LAST. IT SEEMED AT TIMES THAT OUR LEADERS WERE AFRAID TO ADMIT THAT THE PROBLEM WAS TOO BIG FOR AMERICA'S RESOURCES AND GENEROSITY TO HANDLE.

BUT THESE SITUATIONS ARE NOT ISOLATED; THEY ARE RARELY UNIQUE. THE TWENTIETH CENTURY IS THE ERA OF THE REFUGEE, AND THE WORLD IS GENERATING MORE EVERY DAY. MILLIONS OF REFUGEES, FAR

MORE THAN THIS COUNTRY CAN EVER BE EXPECTED TO RESETTLE, LIVE IN CAMPS AROUND THE WORLD. AND NEW CRISES, IN POLAND, AFGHANISTAN, AND THE CARIBBEAN, WILL GENERATE EVEN MORE.

WE THOUGHT THAT WE HAD ESTABLISHED A PRACTICAL AND REALISTIC POLICY IN THE REFUGEE ACT OF 1980. WE LIMITED REFUGEE AND ASYLUM STATUS TO THOSE GENUINELY PERSECUTED OR WITH A REAL, WELL-FOUNDED FEAR OF PERSECUTION. AND, FOR THE FIRST TIME, WE RECOGNIZED A DISTINCTION BETWEEN REFUGEES FOR RESETTLEMENT, AND THOSE FOR WHOM WE OFFERED A TEMPORARY PLACE OF ASYLUM. SEPARATE TRACKS WERE SET UP FOR REFUGEES FOR RESETTLEMENT, FOR WHOM MANY SPECIAL PROGRAMS WERE INITIATED, AND APPLICANTS FOR ASYLUM, WHO WERE TO RECEIVE A TEMPORARY PLACE OF REFUGE, BUT NOT PERMANENT RESIDENT STATUS.

BUT, UNFORTUNATELY, OUR POLITICAL SYSTEM SEEMS UNABLE TO MAINTAIN SUCH FINE DISTINCTIONS WHEN IT COMES TO AN AREA AS EMOTIONAL AS IMMIGRATION. THE PRESSURES TO ALLOW IN MORE AND MORE PERSONS, EVEN IF THEY DO NOT MEET OUR GENEROUS AND BROAD STANDARDS, SEEM TO PREVAIL EVERY TIME THERE IS A CRISIS. LAST YEAR IT WAS THE CUBANS AND HAITIANS FOR WHOM THE LAWS WERE BENT. THIS YEAR THE ATTORNEY GENERAL IS DISREGARDING THE REFUGEE ACT AND ALLOWING INDOCHINESE WHO DO NOT MEET THE CRITERIA OF THE REFUGEE ACT TO BE ADMITTED AS REFUGEES. HE IS DOING THIS EVEN THOUGH LAST YEAR CONGRESS DECIDED TO RESTRICT REFUGEE ASSISTANCE TO THOSE WHO ARE GENUINE REFUGEES, GENUINELY PERSECUTED, OR IN FEAR OF PERSECUTION. I BELIEVE THAT THE ATTORNEY GENERAL HAS A DUTY TO ENFORCE THAT DISTINCTION FIRMLY, NO MATTER HOW LOUD THE

CRIES ARE OF THOSE WHO WANT TO HAVE A HIGHER STANDARD OF LIVING, OR WHO DON'T LIKE THE GOVERNMENT UNDER WHICH THEY LIVE.

MANY PEOPLE CLAIM THAT WE CANNOT BE SO STRICT WITH THOSE WHO ARRIVE ON OUR SHORES IN BOATS, OR WHO APPEAR IN OUR MIDST, HAVING BEEN SMUGGLED INTO THIS COUNTRY. BUT I BELIEVE THAT WE CAN, AND MUST, HAVE THE FORTITUDE TO STAND FIRM IN OUR POSITION. COMMUNICATIONS AMONG NATIONS AND PEOPLES IN THE TWENTIETH CENTURY IS RAPID AND PRECISE. THE MESSAGE THAT WE SEND BY BENDING OUR LAWS, BY ALLOWING ALIENS TO WORK, PENDING THE DETERMINATION OF THEIR STATUS, BY ACCEPTING THOSE WHO DO NOT MEET OUR CRITERIA IS QUITE CLEAR THROUGHOUT THE WORLD. OUR IMMIGRATION POLICIES ARE CONVEYING THAT THE UNITED STATES IS WILLING TO IMPORT A LARGE POVERTY CLASS WITH NO REAL LIMITS. AND IF AN ALIEN CAN GET HERE BY ALLEGING PERSECUTION, HE OR SHE WILL GLADLY MAKE THAT CLAIM.

WE CAN SEND ANOTHER MESSAGE, HOWEVER, ONE THAT WILL BE HEARD JUST AS WELL AND BE HEEDED AS COMPLETELY. THAT MESSAGE SHOULD BE THAT THE UNITED STATES IS STILL A GENEROUS AND COMPASSIONATE COUNTRY FOR THOSE TRULY IN NEED, BUT WE WILL NOT ACCEPT EVERY NEEDY PERSON IN THE WORLD, WE WILL NOT SUPPORT EVERYONE IN THE WORLD, AND WE WILL BE FAIR BUT RIGOROUS IN INSURING THAT THOSE WE DO ACCEPT DESERVE THE SPECIAL TREATMENT THAT WE WILL PROVIDE.

WE CAN SEND THAT MESSAGE TO THOSE WHO WOULD JOIN IN A MASS MOVEMENT TO THE UNITED STATES WITH A FEW SIMPLE, IF POLITICALLY UNCOMFORTABLE, STEPS. FIRST, LET US CLARIFY OUR STATUTES AND REGULATIONS IN REGARD TO REFUGEE AND ASYLUM STATUS. SECOND, LET

US REFINE AND STREAMLINE OUR ASYLUM PROCEDURES. THIRD, LET US ENFORCE OUR IMMIGRATION LAWS. AND FOURTH, LET US WORK WITH OTHER NATIONS, BOTH POLITICALLY AND ECONOMICALLY, TO REDUCE THE POSSIBILITY THAT SUCH MASS MIGRATIONS WILL OCCUR AGAIN. THIS SUBCOMMITTEE HAS PENDING BEFORE IT A BILL, S. 776, WHICH I INTRODUCED THAT WOULD ACCOMPLISH MOST OF THESE GOALS.

SINCE THE INTRODUCTION OF MY BILL, S. 776, NEW EVIDENCE ON HOW THE TERM "REFUGEE" IN THE IMMIGRATION AND NATIONALITY ACT IS BEING MISINTERPRETED HAS COME TO LIGHT. FURTHERMORE, IT ALSO HAS BECOME EVIDENT THAT SECTION 5 (2) OF MY BILL COULD HAVE BEEN INTERPRETED IN A WAY WHICH MAY HAVE CAUSED PROBLEMS FOR LEGITIMATE ASYLEES IN CERTAIN UNIQUE CIRCUMSTANCES. THEREFORE, I AM OFFERING A SUGGESTED MODIFICATION OF THAT SECTION. (ATTACHED)

THIS MODIFICATION WOULD ALTER THE DEFINITION OF REFUGEE IN SECTION 101 (A) (42) IN TWO WAYS AND WOULD APPLY TO BOTH REFUGEES AND ASYLEES.

FIRST, IT WOULD MAKE IT CLEAR THAT ACTS PERFORMED BY THE ALIEN SUBSEQUENT TO OR INCLUDING HIS DEPARTURE FROM HIS COUNTRY WOULD <u>USUALLY</u> BE REGARDED AS SELF-SERVING AND NOT

PROBATIVE AS A BASIS FOR A CLAIM OF PERSECUTION. THIS PROVISION WOULD SIMPLY REQUIRE THAT WE TAKE A CLOSE LOOK AT THE CIRCUMSTANCES SURROUNDING THE DEPARTURE OF THE ALIEN.

IF IT IS CLEAR THAT THE ALIEN HAS ENGINEERED HIS OWN STATUS AS AN ASYLEE OR REFUGEE THROUGH THE ACT OF DEPARTURE ITSELF, IT WOULD NOT JUSTIFY HIS CLASSIFICATION AS AN ASYLEE OR REFUGEE. HOWEVER, THOSE INDIVIDUALS WHO ARE TRUE POLITICAL AND RELIGIOUS DISSIDENTS WOULD STILL BE ENTITLED TO ASYLEE AND REFUGEE STATUS. IN ANY INDIVIDUAL CASE WHERE THERE MIGHT BE SOME QUESTION AS TO AN ALIEN'S QUALIFICATION, WE WOULD STILL HAVE THE PAROLE AUTHORITY OF THE ATTORNEY GENERAL TO FALL BACK UPON.

THE SECOND PART OF THIS MODIFICATION WOULD MAKE IT CLEAR THAT IF AN ALIEN WAS PRIMARILY OR SUBSTANTIALLY MOTIVATED BY ECONOMIC CONSIDERATIONS RATHER THAN BY INDIVIDUALIZED FEAR OF PERSECUTION, HE OR SHE WOULD NOT QUALIFY UNDER THE TERM. I BELIEVE THAT THIS IS NECESSARY DUE TOTHE UNFAIR AND DISCRIMINATORY MANNER IN WHICH THE PRESENT DEFINITION IS BEING APPLIED.

IN INDOCHINA WE HAVE A SITUATION WHERE OBVIOUS ECONOMIC REFUGEES ARE BEING PROCESSED BY THE THOUSANDS AS POLITICAL REFUGEES. THIS CLASSIFICATION GIVES THESE INDIVIDUALS PREFERENTIAL TREATMENT, QUALIFIES THEM FOR RESETTLEMENT IN THE UNITED STATES AND ASSURES THEM OF MILLIONS OF DOLLARS OF SPECIAL BENEFITS. HOWEVER, IN THE MATTER OF THE HAITIAN ENTRANTS, WHO ARE ALSO ECONOMIC REFUGEES, EFFORTS ARE UNDERWAY TO DEPORT THEM.

AT A TIME WHEN THIS CONGRESS AND THE ADMINISTRATION HAS TAKEN REPEATED ACTIONS TO CUT DOMESTIC ASSISTANCE PROGRAMS FOR OUR OWN NEEDY CITIZENS BY BILLIONS OF DOLLARS, I DO NOT BELIEVE THAT WE CAN CONTINUE A MULTI-BILLION DOLLAR REFUGEE PROGRAM AT THE SAME LEVEL WE HAVE IN THE PAST. IT IS TIME THAT WE RETURNED TO THE ORIGINAL INTENT OF OUR REFUGEE POLICY AND APPLY IT ONLY TO THOSE INDIVIDUALS WHO ARE THE TRUE AND UNQUESTIONED POLITICAL OR RELIGIOUS ACTIVISTS, WHO STAND IN FEAR OF ACTUAL PERSECUTION.

S. 776 WOULD ALSO MAKE IT CLEAR THAT AN ALIEN WHO IS SEEKING OR APPLYING FOR ASYLUM IN THE UNITED STATES WOULD NOT BE DEEMED TO HAVE ENTERED THE UNITED STATES UNLESS LAWFULLY ADMITTED. THE PURPOSE OF THIS SECTION IS TO MERELY ESTABLISH THAT APPLICANTS

FOR ASYLUM ARE NOT ENTITLED TO ALL OF THE DUE PROCESS RIGHTS THAT ACCRUE TO A CITIZEN OR LEGAL RESIDENT OF THIS COUNTRY.

ONE OF THE LEADING EXPERTS IN THE FIELD OF IMMIGRATION LAW, CHARLES GORDON, HAS STATED THAT "THROUGH THE YEARS, THE COURTS HAVE SAID THAT CONGRESS CAN FASHION ANY PROCEDURES IT DEEMS APPROPRIATE TO DETERMINE WHETHER AN ENTRANT IS ADMISSABLE." I BELIEVE CONGRESS SHOULD EXERCISE THIS POWER.

AT ONE TIME WE COULD AFFORD THE LUXURY OF VERY FORMAL HEARINGS FOR APPLICANTS FOR ASYLUM. HOWEVER, AS THE ATTORNEY GENERAL POINTED OUT YESTERDAY, THE HUGE NUMBER OF PENDING CASES NO LONGER MAKES THIS POSSIBLE. IN 1978 THERE WERE FEWER THAN 3,800 ASYLUM APPLICATIONS RECEIVED. HOWEVER, THE NUMBER OF PENDING APPLICATIONS IN THE CURRENT FISCAL YEAR WILL TOTAL ABOUT 200,000.

WE MUST PROVIDE PROCEDURES WHICH WILL PERMIT THE FAIR BUT SPEEDY PROCESSING OF THESE CLAIMS IF OUR IMMIGRATION LAWS ARE TO HAVE ANY MEANING AT ALL. BY MAKING IT CLEAR TO THE COURTS AND INS THAT THESE INDIVIDUALS HAVE NOT BEEN LAWFULLY ADMITTED AND AS SUCH ARE ONLY ENTITLED TO MINIMUM DUE PROCESS RIGHTS, WE CAN ASSURE THAT OUR IMMIGRATION LAWS ARE AGAIN GIVEN THE RESPECT

THEY DESERVE. I BELIEVE THAT THIS PROVISION CONFORMS TO THE ADMINISTRATION'S PLAN, WHICH CALLS FOR EXPEDITED PROCESSING OF APPLICANTS FOR ASYLUM.

THE THIRD AND LAST PART OF THE ASYLUM PROVISION IN S. 776 WOULD REQUIRE THAT THE ADMINISTRATION ESTABLISH A PLAN FOR HANDLING MASS ASYLUM SITUATIONS. THE PRESENT ADMINISTRATION APPEARS TO AGREE WITH THIS NECESSITY AND HAS SUBMITTED AT LEAST THE OUTLINE OF SUCH A PLAN TO CONGRESS.

I AM GREATLY ENCOURAGED BY THIS ACTION ON THE PART OF THE ADMINISTRATION, AND WILL LOOK FORWARD TO SEEING THE SPECIFICS OF THAT POLICY.

OUR STATUTES CLEARLY NEED REVISION. IF THE DEFINITION OF "REFUGEE" IN THE LAW IS SO INEXACT THAT IT IS CONTINUALLY ABUSED, WE MUST MAKE IT MORE SPECIFIC. DURING CONSIDERATION OF THE REFUGEE ACT, I OFFERED AN AMENDMENT THAT WOULD HAVE ALTERED THE DEFINITION TO INCLUDE ONLY THOSE REFUGEES WITH A STRONG RELATIONSHIP TO THE UNITED STATES, A RELATIONSHIP THAT WOULD GIVE US A SPECIAL RESPONSIBILITY TO THEM.

IT SEEMS THAT SUCH A CHANGE WOULD BE APPROPRIATE TODAY, WHEN MANY OF THE APPLICANTS FOR REFUGEE AND ASYLUM STATUS HAVE NO CONCEIVABLE CONNECTION TO THE UNITED STATES. WE SHOULD ALSO MAKE

IT CLEAR THAT THOSE FLEEING A COUNTRY FOR ECONOMIC REASONS, OR JUST TO HAVE AN EASIER LIFE, ARE NOT THE INTENDED RECIPIENTS OF OUR RESPONSIBILITY. AND WE SHOULD MAKE IT CLEAR THAT THOSE WHO WOULD SUFFER SOME PENALTIES SIMPLY BECAUSE THEY FLED SHOULD NOT BE GIVEN THE SPECIAL STATUS WE ACCORD TO FREEDOM FIGHTERS AND POLITICAL PRISONERS.

OUR ASYLUM PROCEDURES ARE IN NEED OF DRASTIC CHANGE. WITH MANY LAYERS OF REVIEW, EVIDENTIARY HEARINGS, LEGAL CONTESTS ON MINUSCULE POINTS, AND LENGTHY DEBATES IN THE MOST TRIVIAL CASES, ASYLUM PROCEEDINGS DRAG ON FOR YEARS. ALREADY SOME CONGRESSIONAL OFFICES HAVE ADVISED ILLEGAL IMMIGRANTS THAT THEY CAN REMAIN AND WORK IN THIS COUNTRY IF THEY APPLY FOR ASYLUM, NOT BECAUSE THEY DESERVE ASYLUM, BUT BECAUSE THE SYSTEM IS SO CLOGGED THAT THEY WILL NOT RECEIVE CONSIDERATION FOR YEARS. WE SHOULD RETURN TO THE PROCESSING PATTERN, WHICH IS SWIFT AND FAIR: AN INDIVIDUAL HEARING BEFORE AN APPROPRIATE OFFICER TO DETERMINE IF THERE IS A COLORABLE CLAIM TO ASYLUM STATUS, AND A RAPID DECISION.

IF THERE IS NO COLORABLE CLAIM TO ASYLUM, LET US IMMEDIATELY RETURN THAT PERSON TO HIS OR HER HOME. IF THERE IS A COLORABLE CLAIM, LET IT BE DETERMINED QUICKLY, WITH ONE LEVEL OF ADMINISTRATIVE APPEAL, TO THE INS DISTRICT DIRECTOR WHO IS HIGHLY TRAINED AND OBJECTIVE.

IF THESE PROCEEDINGS ARE SWIFT AND SURE, THERE WILL BE NO NEED FOR LENGTHY DETENTION OR FOR WORK AUTHORIZATION. APPLICANTS FOR ASYLUM COULD BE DETAINED BRIEFLY WITHOUT BEING ELIGIBLE FOR EMPLOYMENT.

I BELIEVE THAT THERE IS ADEQUATE JUDICIAL PRECEDENT FOR THIS TYPE OF PROCESS.

AN ESSENTIAL POINT IN ANY CONSIDERATION OF IMMIGRATION REFORMS, FOR MASS ASYLUM OR OTHER CASES, IS THE NEED FOR STRONGER ENFORCEMENT OF OUR IMMIGRATION LAWS ALREADY ON THE BOOKS. I HAVE ALREADY SPOKEN ABOUT BENDING THE LAWS, BUT HERE I WANT TO POINT OUT THAT MUCH OF OUR IMMIGRATION LAW IS INACTIVE BECAUSE IT IS IGNORED. WE JUST HAVE NOT MADE THE EFFORT REQUIRED TO ENFORCE OUR LAWS. WE DO NOT HAVE ENOUGH PERSONNEL IN INS, NOR THE MEANS TO SUBSTITUTE STATE OR LOCAL PERSONNEL OR COORDINATE WITH OTHER AGENCIES SUCH AS THE DEPARTMENT OF LABOR OR THE SOCIAL SECURITY ADMINISTRATION. UNLESS WE PROVIDE MORE ENFORCEMENT FOR OUR IMMIGRATION LAWS, MORE RESOURCES AND PERSONNEL, ANY DECISION THAT WE MAKE ON MASS ASYLUM OR OTHER QUESTIONS WILL BE FRUSTRATED.

NOW, LET ME ADDRESS ONE OF THE MOST POPULAR CONCEPTS IN IMMIGRATION REFORM: COOPERATION WITH OTHER COUNTRIES. IT IS ALWAYS EASIER TO SUGGEST THAT THE PROBLEM COULD BE SOLVED THROUGH INTERNATIONAL AGREEMENTS. IT IS EASIER, BUT NOT CORRECT.

WE MUST HAVE SIGNIFICANT CHANGES IN OUR OWN LAWS AND OUR OWN PROCEDURES BEFORE WE CAN OBTAIN HELP FROM OTHER NATIONS. SO LONG AS THE UNITED STATES IS SEEN AS A "PATSY," QUIETLY ACCEPTING ANYTHING THROWN AT HER, THERE IS NO REASON FOR OTHER NATIONS TO MAKE SACRIFICES ON IMMIGRATION ISSUES. WE WILL ALWAYS DO MORE, AND WILL BE EXPECTED TO DO MORE. BUT WE MUST NOT BE SEEN AS EAGER TO DO EVERYTHING WHILE OTHERS DO VERY LITTLE OR NOTHING. ONLY WHEN WE

TAKE A FIRM POSITION AND MAINTAIN OUR RESOLVE, WILL OTHER COUNTRIES TAKE THE INITIATIVE.

I CANNOT FAIL TO MENTION THE KEY TO ALL THESE REFORMS, HOWEVER, THAT MAY SEEM A STEP REMOVED FROM IMMEDIATE QUESTIONS OF MASS ASYLUM. THAT IS THE NECESSITY FOR A CEILING ON LEGAL ADMISSIONS, INCLUDING REFUGEES AND APPLICANTS FOR ASYLUM. ONLY BY INSTITUTIONALIZING THAT KIND OF CONGRESSIONAL CONTROL OVER IMMIGRATION CAN WE RESIST THE SHORT-TERM POLITICAL PRESSURE BROUGHT TO BEAR BY SPECIAL INTEREST GROUPS WHO WREAK SUCH HAVOC ON OUR LAWS AND PROCEDURES. ONLY BY REGAINING OUR CONTROL OF THIS IMMIGRATION PROCESS CAN WE HELP THE EXECUTIVE BRANCH PLAN FOR AND EXECUTE RESPONSIBLE AND GENEROUS IMMIGRATION AND REFUGEE RESETTLEMENT POLICIES.

MR. CHAIRMAN, IN ADDITION TO THE CHANGES WHICH S. 776 WOULD BRING ABOUT, I BELIEVE THAT WE MUST ALSO BEGIN DEVISING INNOVATIVE WAYS TO DEAL WITH THE GROWING REFUGEE PROBLEM. I RECENTLY HAD THE PRIVILEGE OF REVIEWING A LETTER SENT TO THE ATTORNEY GENERAL BY MR. RALPH E. GETZ OUTLINING THE TYPES OF PROPOSALS WHICH SHOULD BE PURSUED. THESE INCLUDE:

---THE FEASIBILITY OF EXTRACONTINENTAL PLACEMENT OF ALIENS THROUGH LARGE AND SMALL SCALE DEVELOPMENT PROJECTS, INCLUDING AGRO-BUSINESS PROJECTS, IN THIRD COUNTRIES.

---EXTRACONTINENTAL "HOLDING CENTERS" FOR ALIEN ENTRANTS (ONE EXISTS; OTHERS MAY BE NEEDED).

---REFUGEE RECYCLING, TO PROVIDE SKILLS AND OTHER TRAINING WHICH WOULD BETTER EQUIP REFUGEES AND ILLEGALS TO RETURN TO THEIR OWN COUNTRIES OR RESETTLE IN THIRD COUNTRIES (MANY DESIRE TO DO SO).

---MODIFICATIONS TO GOVERNMENT POLICIES AND THE U.S. DISSEMINATION OF GOVERNMENT INFORMATION, SINCE IT ACTUALLY MAY BE INCREASING REFUGEE INFLOW.

---ASSESSMENT OF WHETHER THE U.S. GOVERNMENT AGENCIES AND PRIVATE ORGANIZATIONS AND PROFESSIONS NOW IN CONTACT WITH REFUGEES ARE THE APPROPRIATE ONES--IN TERMS OF THE NATIONAL INTEREST, AND TOWARD REDUCING THE INFLOW.

I BELIEVE THAT IT IS THIS TYPE OF NEW THINKING WHICH IS NECESSARY IF WE ARE TO EVER FIND SOLUTIONS TO THE WORLDWIDE REFUGEE PROBLEM.

I REALIZE THAT I HAVE STRAYED FROM WHAT HAS BEEN MY CHARACTERISTIC RESTRAINT IN DISCUSSING THIS ISSUE, MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE. BUT I FEEL STRONGLY THAT WE ARE REACHING THE END OF OUR ROPE ON THIS ISSUE. WE HAVE REACHED A PERIOD IN WHICH WE MAY HAVE OUR LAST OPPORTUNITY TO PEACEFULLY CONSIDER GENEROUS IMMIGRATION REFORM IN THE TRADITIONS OF THIS COUNTRY. I SEE RESENTMENT AND VIOLENCE FLARING THROUGHOUT THE COUNTRY. AND I AM CERTAIN THAT IT WILL SPREAD UNLESS CONGRESS ACTS SOON.

I BELIEVE IN IMMIGRATION, MR. CHAIRMAN. I FEEL THAT IT HAS MADE THIS COUNTRY GREAT, AND THAT IT WILL SERVE A USEFUL PURPOSE IN THE FUTURE. I ASK ONLY FOR CONTROL OVER IMMIGRATION SO THAT THOSE WHO WOULD CUT OFF IMMIGRATION, WHO WOULD SEVER THAT PART OF OUR NATIONAL CHARACTER, WILL NOT HAVE AN OPPORTUNITY TO GENERATE A BACKLASH SWEEPING AWAY OBJECTIVITY AND REASONABLE DISCOURSE. THAT IS WHY I WORK FOR IMMIGRATION REFORM, AND THAT IS THE MESSAGE I HOPE ALL THE MEMBERS OF THE SUBCOMMITTEE WILL CONSIDER THROUGHOUT

THE NEXT YEAR. IF WE DO NOT ACT NOW TO CONTROL IMMIGRATION, WE MAY NOT HAVE THE CHANCE LATER.

THANK YOU.

TEXT OF HUDDLESTON AMENDMENT TO IMMIGRATION AND NATIONALITY ACT

DEFINITION OF "REFUGEE"

Section 101(a)(42) of the Act would read as follows:

The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such a person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. *Acts performed by the alien subsequent to or including his departure from his country of nationality, or, in the case of an alien without nationality, from a country in which he last habitually resided, shall usually be regarded as self-serving and not probative as a basis for a claim of persecution.* The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion, * or any person whose application for refugee status was primarily or substantially motivated by economic considerations rather than by individualized persecution or well-founded fear of persecution as defined in this sub-paragraph.

Senator SIMPSON. The next witness is Ben Civiletti, the former Attorney General of the United States, who now serves as a member of the Citizens Committee for Immigration Reform. This is a very interesting group that is getting a good start in America, and it has some remarkable people in its membership, not only Attorney General Civiletti, but Elliott Richardson, Gerald Ford, Bob McNamara, Lane Kirkland, George Romney, Ben Hooks, Douglas Fraser, and many, many more. That shows you the cross section of people that we are dealing with, who are interested in immigration legislation.

The time for talk is over. We are now in the legislative arena, and we are going to do something.

Ben, it is good to have you here.

STATEMENT OF BENJAMIN CIVILETTI, COCHAIRMAN OF THE CITIZENS' COMMITTEE FOR IMMIGRATION REFORM

Mr. CIVILETTI. Thank you, Chairman Simpson.

As you have mentioned, the Citizens' Committee is a broad based, nonpartisan organization committed to rational and humane reform of the country's immigration laws and policies. We think that the time has come for a new immigration policy, and it can be achieved through the careful and thoughtful analysis that congressional committees will give to it. It is our hope to help to cast the debate on the elements of such a policy in a manner that will benefit the Nation as a whole.

I have a statement that I hope will go into the record. But in light of the complete statements made by the three Senators this morning and in light of the time, I would like to simply address in a summary fashion five or six points which I think are principles dealing with the subject of mass asylum and which are applicable to any differing circumstance, such as the two that we have heard of this morning.

The Cuban situation, past and future, is different and will be different from the present Haitian situation. And those two again may be different entirely from Caribbean mass asylum circumstances that may develop in the future, or in central American circumstances.

I think the first principle or point is that the United States ought to design its programs and policies so that it is not a country of first mass asylum, or the first country for mass asylum. It is extremely difficult for us to function in that manner. Our systems are not geared for sudden and immediate entry from a departing country. And I suggest that every effort ought to be made so that we conduct either asylum proceedings or an opportunity to be heard in foreign countries or that, as we have done so successfully in the past with regard to some refugee and mass asylum circumstances, we have a country temporarily serving as a host country, before entry into the United States. I think it is only in the most extraordinary of circumstances that we can serve as the first country of asylum.

Second, and in the same light, I think that what is particularly difficult for the United States is an irregular, sporadic almost "illegal" flow of people into the United States claiming mass asylum. And to the extent that we can seek further cooperation

and stronger agreements with countries that have migration problems such as Haiti and we can develop an ability to provide an opportunity, either in that country or in a third country, for processing, for consideration fairly and on the merits of legitimate asylum claims, I think we will be far better off.

Once persons are on our shores, then it is exceedingly difficult both legally and constitutionally and simply practically to deal with those persons effectively and fairly and soundly.

A third principle I think that we must stick to, perhaps with some greater definition and precision, is that asylum is to be granted to those people who are suffering from political persecution in their country of origin. This political persecution should be based on political belief or race, sex or national origin, and not on the consequences of the ebb and flow of economic deprivation which occurs in so many countries, unfortunately, such as between Third World countries today and the United States.

There are just too many people, it seems to me, to provide entry into the United States as a solution to economic deprivation. We must do everything we can to assist the less fortunate peoples of the world. But I think we have to do it in ways other than entry into the United States. investment, transfer of technology, equipment, and through international organizations.

Fourth, within any of the principles of mass asylum, I think we have to provide for one fair and expeditious hearing or proceeding or determination, and perhaps a limited one appeal on the record, not a redetermination, not a trial *de novo.* That is all that I think any system can demand or require to be given in an asylum situation. And again harking back to my prior recommendation, to the extent possible I think we should explore the opportunity for that to be done in a surrounding and circumstance other than in the continental United States.

And last, I think, as has been so eloquently stated by the Senators from Florida, people who are here and who do enter here and are imposing, or at least existing, on the public benefit programs within our cities and States must be fairly supported. And as to lawful entries, whether they are legitimate refugees or asylees, we cannot dump the responsibility, the monetary, economic, and social responsibility, on isolated parts of the country.

But this is a national problem, and the Federal Government must bear its fair share of the responsibility for both lawful entries under an approved asylee program and for the unfortunate circumstances that develop when there is unlawful asylee entry by 400 or 500 Haitians in this instance, or possibly by Jamaicans through Canada, or any other unlawful entry circumstance where there is a claim of refugee status or asylee status combined.

I think these five or six principles must be an integral part and the kind of four corners of any serious attempt to attack the mass asylum problem.

[The prepared statement of Mr. Civiletti follows:]

PREPARED STATEMENT OF BENJAMIN CIVILETTI

Mr. Chairman and Members of the Subcommittee:

I am pleased to be able to testify before this Subcommittee today on behalf of the Citizens' Committee for Immigration Reform. The Citizens' Committee is a broadly-based, non-partisan organization committed to the rational and humane reform of this country's immigration laws and policies. We believe that a new immigration policy must be achieved through careful and thoughtful analysis, and it is our hope that we can help to cast the debate in a manner that will benefit our nation as a whole.

On a more personal note, the Chairman and I were privileged to serve together for many months on the Select Commission on Immigration and Refugee Policy. During our deliberations, we learned a great deal about the historical impact of immigration on this country and much about the current dilemmas this country faces, including the particular issues we are discussing today.

I have been asked today to address issues dealing specifically with mass asylum and, more particularly, with the problems caused by the recent influx of Cubans and Haitians over the last 18 months. During my tenure as Attorney General in the Carter Administration, the questions of what to do with the 125,000 Cubans who arrived here in the so-called "Mariel boat lift" or "Cuban Flotilla" and the thousands of undocumented Haitians who continue to come ashore in South Florida, were among the most intractable problems we faced. Frankly, no one was prepared to handle the mass of people who came in those few months in 1980 but we did the best we could to both handle the flow and to stem it. I am well aware that the responses were not quick or complete enough.

During 1980, the boat lifts from Mariel Harbor, Cuba brought approximately 125,000 Cubans to South Florida. Approximately 2.5% of these Cubans (3,000) were sent by the Cuban authorities from their prisons, and mental institutions; others were simply social misfits. Most of these people have already been resettled in American communities. But 1,800 criminals remain housed in the Atlanta federal prison and 1,700 mentally ill and social misfits remain at Fort Chaffee, Arkansas pending imminent reassignment.

In addition to this mass inflow of Cubans, there has been a steady flow of Haitians into South Florida during the past two years. This flow averages about 15,000 a year on top of the 35,000 who are currently here. Many of these Haitians face the threat of political persecution at home; however, the vast majority seem to be simply seeking escape from lives of continued poverty and economic desperation. The per capita income in Haiti is less than $300 per year.

Our hearts go out to any people who are seeking better and more productive lives. But we have to be realistic about the absorptive capacity of this country both socially and economically. We cannot let our refugee and mass asylum policy be determined by hostile foreign leaders or by entrepreneurs who make a living from bringing undocumented aliens to our shores. And we must develop a policy that is fair to both the people who want to come here and people who are already here.

I. Sharing the Burden With Other Nations

We should attempt to sort through regional and international organizations to spread the responsibility for accepting people seeking asylum. Our humanitarian instincts suggest that we should be willing to be a country of mass first asylum. As a nation, we are comparatively wealthy. We have always con-

sidered our diversity one of our principal virtues. And because we already have various communities where persons of a variety of nationalities have settled, we already have in place some bases for survival networks.

But these humanitarian impulses must be tempered with realism. We do not have the resources to expand infinitely our capacity to welcome unexpected masses of people seeking asylum. This country is in the process of revising an immigration and refugee policy that already accepts large numbers of regular immigrants and other refugees each year. By the terms of the Refugee Act of 1980, the base allocation for refugees is 50,000 per year. We cannot stand ready, however, as a matter of course, to absorb huge numbers of foreign nationals seeking asylum over and above the immigration flows we have adopted as matters of deliberate policy. We should always remain a country of asylum for those fleeing oppression, but we must work through international organizations to share this burden equitably.

We should follow a dual strategy. First, we must work through international organizations, including the U.N. High Commission on Refugees, to obtain commitments from other nations to share the burdens of accepting participants in mass out-migrations. Second, we must be better equipped to act as the country of first asylum only in extraordinary mass asylum situations for those people who do reach our shores.

II. Advance Planning For Asylum Emergencies

There is no way to eliminate completely the substantial burdens imposed by large groups of foreign national seeking asylum in the U.S. Our objective must be to minimize those strains by developing methods to screen the people seeking mass asylum, if possible, before they leave their native lands and to accommodate them properly once they have arrived.

Whenever possible, we should seek to develop working arrangements with "sending" nations to set up preliminary

asylum centers in those countries. The benefits of this type of proposal are obvious. It would allow early evaluation of asylum applications at a point prior to the time applicants are on U.S. soil. It would permit us to work on a multi-lateral basis to find non-U.S. asylum sites for people determined to leave their native land. Finally, it would permit a more measured entry with greater chance of sound support and limited local disruption.

The problems with this sort of preliminary screening strategy are substantial. There will be cases, as with the Indochinese boat people and the Cubans from Mariel Harbor, where our poor relations with the sending government seem to preclude our working together to make the process more rational and equitable. Moreover, establishing asylum screening centers in the sending country may inhibit precisely those geniunely oppressed people who may have much to fear from coming forward to seek asylum. The process of coming forward, being rejected, and then returned to the jurisdiction of oppressive local authorities may most discourage those people whom we should want to seek asylum.

Even in the Mariel Harbor situation, however, we might have done more than we did. First, we should have tried to negotiate with the Cuban government to allow us to send asylum ships to Mariel Harbor. We could have then conducted on-the-spot reviews of asylum claims and rejected those (including the criminals, the insane, and the misfits) who were unsuited to come to the United States. Secton, in conjunction with this screening, we could have used the Navy to assist the the Coast Guard to prevent other illegal transport vessels from moving to and from Cuba.

These are difficult problems. But it is clear that more can and should be done to make the process of screening asylum applicants more cooperative and less haphazard.

At home, we must be better equipped than we are at present to cope with mass asylum situations. The Select Commission recommended that an interagency body be established that would be responsible for opening and managing federal processing centers. What is needed, in other words, is a federal strategy to provide care for those people seeking asylum while their individual cases are being determined.

We must be able to acknowledge the problems that have surfaced over the last two years. There have been substantial delays in processing those who seek asylum; there has been the widespread perception that the Haitians have been discriminated against on the basis of race; there has been an inconsistent Federal policay with respect to work authorizations for Haitians; the placement of Cubans in processing centers has been, at best, haphazard; communities chosen as the sites for processing centers have reacted quite negatively; and the delivery of necessary services to the processing centers has been inadequate.

We believe that the way to minimize these problems is through careful advance planning. Such planning should involve the appropriate Federal agencies, including the White House, the U.S. Coordinator for Refugee Affairs, INS, the Departments of State, Health and Human Services, Education, the Army, and and the FBI. In addition, voluntary agencies and local government representatives who must play essential roles in actually implementing such a system should be brought in at early stages of the planning process. The Select Commission recommended that this planning body develop contingency plans for actually opening and managing federal processing centers where applicants should stay while their applications were being processed.

The advantages of having in place a planning process and a set of procedures to handle these mass asylum situations would be substantial. Moreover, the existence of processing

centers would itself have numerous benefits. It would permit large numbers of asylum applications to be processed quickly in a central location; specially trained staff could be supplied to the centers; applicants could be centrally housed, fed, and provided with medical care; law enforcement problems could more easily be controlled; the resettlement of applicants whose asylum applications are denied would be eased by the involvement of the U.N. High Commission for Refugees; ineligible applicants would not be released into communities where they might disappear and thereby avoid deportation; and the existence of such centers would deter those who might otherwise view asylum claims as a reliable means of backdoor immigration.

Serious advance planning would eliminate some of the worst features of our recent experiences with the Cubans and Haitians. It would ensure that individual applicants would be treated more decently and with more respect for their human dignity than we have accorded them in the recent past.

III. Adjudicating Individual Claims and Enforcement

It is difficult to foresee mass asylum situations. Even with quite sophisticated advanced planning, many of the most important decisions will have to be made as a mass asylum situation develops. With respect to the continiung flow of refugees from Haiti, an appropriate strategy must be developed right now.

It is reported that the Administration has chosen a questionable interdiction strategy to deal with future boat-loads of Haitians. It would involve authorizing the Coast Guard to intercept boats carring Haitian refugees and might include a preliminary hearing process on board ship to determine the the presence of passengers ineligible for asylum. The New York Times has already coined the appropriate term for these proceedings: "walrus courts." It is reportedly favored by many in the Administration because it is reasonably inexpen-sive, and might act as a strong deterrent against future episodes.

The problem with this solution is that it sacrifices procedural regularity for the sake of expediency and threatens to humiliate us throughout the world. It is unlikely that the type of proceeding that could be held on board ship would lead to proper and consistent decisions on whether to admit individual applicants. It is equally inconceivable that ugly spectacles such as Haitians jumping ship or the Coast Guard relying on force to quell disturbances could be avoided. The result would be embarrassment at home and charges of hypocrisy from abroad.

One part of an appropriate solution is to seek sanctions against those people who make their living off the backs of undocumented aliens trying to migrate to this country. Harsher enforcement measures against people who bring undocumented aliens into the country makes good sense. These measures could include both criminal policies and forfeiture of vessels.

But the applications of individuals seeking asylum should be handled in some other way than in harried circumstances aboard ship. The Select Commission has endorsed the streamlining of current procedures for evaluating asylum applications to bring them in line with what is currently done with respect to refugees. Currently, a person who belongs to a group qualified for refugee status is accorded a strong presumption of eligibility and the procedure for evaluating an individual claim is quite straightforward. This is in stark contrast to the tedious and onerous individualized burdens of proof required of individuals seeking asylum. Since the grounds on which people should be granted asylum and refugee status are identical, similar procedures should be adopted to process asylum applications.

Group profiles could be developed for asylees based on evidence of how members of particular religious, ethnic, racial, and political groups are treated in different countries. On the basis of these group profiles, presumptions could be made concerning the validity of individual claims. No longer

would each asylum claim be treated as unprecedented. The result would be greater consistency and speed in making such decisions.

To further expedite the handling of asylum applications, the Select Commission recommended creating the position of asylum adjudications officers within INS. It was our feeling that a small group of specialists trained in making eligibility determinations would be better equipped to make the individual decisions than the non-specialist officials who do so at present. One level of asylum appeal should be provided as a matter of right, and the appeal should be handled in the same fashion as other immigration appeals.

If we implement the kinds of procedures I have just sketched, we will be better able to ensure that mass asylum situations do not turn into unmitigated disasters. We all wish that these problems did not arise in the way that they do. But the answer is not to go for the glamorous or cruel quick fix. Neither a strategy of interdicting boats carrying undocumented aliens seeking asylum nor rounding them up in detention camps when they arrive in the States is the appropriate solution. Instead, we must seek to ensure that people who seek an escape from oppression and persecution continue to be welcomed here and that we deal with all applicants in a way that allows us to hold our heads high.

Senator SIMPSON. Well, I thank you, Ben. As usual, those are very thoughtful comments.

Let me ask a few questions, and this is just really for the purpose of this record. I really appreciate my colleagues remaining here, because I know that you only learn after you have been here in the Senate the meaning of time. In my short 2½ years, I have learned that, and I appreciate your attendance.

So let me get right at some things that I think can help build the record. To the two Senators from Florida, it is obviously a very real feeling of the citizens of your State that they have been subjected to the bulk of the burden of the problems arising from last year's Cuban crisis and the Haitian dilemma.

How would you respond to allegations—and we hear these all the time—from Haitian advocacy groups who claim that the removal of

Haitians from Florida will jeopardize their right to counsel and other due process requirements? How do you feel about that? It is an historical tug at our heartstrings and it also comes with our sense of fairness.

Do you have any thoughts as to how we should deal with that issue, when we are told that the removal of these people from Florida will jeopardize their constitutional rights, their due process commitments, their right to counsel, that type of thing?

Senator CHILES. Well, Senator Huddleston, Mr. Chairman, has commented, as has former Attorney General Civiletti, about due process. I think some of the things that we have to consider is that since 1978 we have only deported, I think it is, 18 Haitians from Florida since 1978. So you might say the people from due process, that are seeking their due process, are now winning a little more than due process, if in the whole system since 1978 and the 40,000 roughly that we say are here—and that is the number that we have counted; we do not know how many more that are here that we have not counted—if in that number we have only sent out, it is either 16 or 18 since that period of time.

The other point I think to be made is, if we are talking about the due process there, what about the due process of the thousands and hundreds of thousands of people who would like to come to this country, who put their name on a quota list, whether they are from any European country or any Third World country or any South American country, and patiently wait under what is supposed to be the law? You know, what about their rights, as opposed to someone who illegally smuggles himself into this country and suddenly obtains some kind of constitutional rights?

Now, I think if we are really talking about equity and fairness, we have to say for those people who have been waiting, and some of them have been waiting for years in certain countries, depending on what our quotas are, they are there following what is supposed to be the law of this land and waiting. And yet, if you get in here illegally, then suddenly you inherit some constitutional right.

I just do not see anything that is basically fair with that. I think, as Mr. Civiletti says, we have to set up a process for the hearings. But we can set that up in the host country or in a country outside of our origin just as easily as it can be set up here.

Senator HAWKINS. There are judges involved in this, and I do not believe a lot of Floridians understand that it is not just the immigration policy, but the judicial decisions that were handed down that have contributed to the immigration problems in Florida. Judge King, I believe is his name, is one of them, who made the decision that if they touch our land they then are a refugee and have to be given a hearing.

Also Judge Hastings, who is the last judge I believe that has spoken to this, says not only must they have an individual hearing, but after INS had a mass hearing of 76 Haitains and was ready to deport them, the Legal Services Corps or some busybody attorneys decided that was not due process and so they went before Judge Hastings and got a decision that they had to be reheard.

Judge Hastings also wrote in his opinion that you had to have an interpreter for the creole dialect that the Haitians speak. INS then

had under Judge Hastings' decision, to hire a consultant that would help with the translation to make sure that each and every one—must be made 100 percent sure that the person we are trying to deport, the illegal alien that we are trying to deport understands what is going on in a dialect that is unfamiliar to us as Americans.

So you know, the more lawyers and the more judges you get involved in this, the more complicated it becomes. I believe the assertion I heard and the one you are mentioning is, what I am saying, if we cannot move them from Florida to have a due process hearing, does that mean that Florida is the only place you get due process? I think you can move them en masse to New York and have a hearing, or any of these other particular places.

Well, we had about nine places outlined that we were going to send some, so that everybody had an equitable share and you would not infringe upon the rights of them. They are just stacked on top of each other like boxes, and I believe they can have due process anywhere in the United States once they hit our shores.

Senator SIMPSON. We could have used you on the Select Commission, Paula, in a couple of areas, because we did at times you know, tend to get ground down into distinction upon distinction and citation upon citation, and I see the nonlawyers bobbing their heads at the witness table. I practiced that profession for 20 years and I have seen how these things can occur.

And I have visited with fellow attorneys—we do not refer to them as "busybodies." [Laughter.]

We refer to them as "learned colleagues of the bar who have misspoken themselves."

But I am going to ask a question of Ben, who has served at the highest office an attorney can hold in the profession. Namely, we know of attorneys who are pleading and arguing these asylum cases for their clients, while knowing full well that they do not qualify as asylees. Nevertheless they do that for the purposes of obtaining a delay and of "building up equities," in the hope that some day an amnesty, the great gatherer of equities, will be at the door.

This is an interesting situation. I have great concern about how it squares with the canons of ethics of the American bar.

These are my views; and I do not want to impose those on you, but would greately appreciate your thoughts.

Mr. CIVILETTI. Let me give you a couple of quick answers. One, on the issue of venue, that to remove people out from Florida or to have a hearing before they ever get to Florida would be a failure of due process. That is a false issue and nonsense and ought not to be tolerated, as the panel has suggested.

If a proceeding is brought, continued or postponed for the purpose of delay, that is unethical, and it does not matter whether it is an antitrust case or it is an immigration hearing or it is a contract case. If your sole purpose is not on the merits of resolving the conflict or dispute or determining the facts, then delay and machinations and other procedures brought by an attorney with knowledge that it is exclusively for delay is an unethical act and can be spoken to and disciplined.

If the proceeding is brought for the purpose of representing a client whom you may well know in his view, or at least from his

statements, is not truly entitled to asylum, entitled as an economic refugee, so to speak, or someone with economic deprivation, in that instance it is not fair for you to judge any more than it is fair for you to judge, defending someone who is charged with a crime.

So if your effort really is to try and show a legitimate claim to asylum and to ask for and seek that hearing, with the right to counsel and the right to testify before a fair officer, then that is ethical. If your intent is over a series of maneuvers to obtain equities which have nothing to do with the legal proceedings, but to just involve time spent in this country, again I think that is questionable, ethically unsound, of questionable ethics.

So in quick answer, one is clearly unethical for delay only. For a merit determination it is ethical, even though the person may have a limited claim. And the third circumstance, where intent is for some other developed equities over a period of time, I think that in the latter case it is seriously questionable ethics.

Senator SIMPSON. We are going to pursue that in the hearing process, and we will have those who have a persistent interest in this field here to give their testimony.

Senator HAWKINS. Mr. Chairman, may I suggest you just go watch the shores in Florida. We have all heard of ambulance chasers in the legal profession.

Senator SIMPSON. Do you realize what you are doing to our——

Senator HAWKINS. I do not mean to berate lawyers. Everybody needs one. I do not think everybody needs to be one. [Laughter.]

But if you were to go to Miami and just watch this process, some of them are met on the shores by a lawyer who wants to explain to them by various means that they would like to represent them, and tell them all these wonderful things that America can do for them if they had counsel.

I think you need an investigation on how this is operating down there. The same thing is happening in INS lines, where we have long lines of entrants who know that the year is up and they may need to get something stamped or something that U.S. law requires. They stand in lines four or five blocks long to get this piece of paper, and there are the same kinds of legal people walking those lines saying, you do not have to stand in this long line, I can help you.

You know, it is kind of like saying, I am from the IRS, I came to help you. Now, I think we need to go look at that very closely, and your committee might want to look into that.

Senator SIMPSON. We intend to do that.

Senator Huddleston, you participated in our hearing yesterday, and again today, and note that we come up again with this issue of economic refugees and migrants. And as I stated this morning, we are not only dealing with the term "refugee" but also with the term "persecution." We have taken testimony from the Justice Department, and the State Department that we really do not need to make any changes, that it is solely one of interpretation.

What are your views on that?

Senator HUDDLESTON. Well, I heard Ms. Meissner's nonanswer to the question. I understand, of course, that this is not the desire of the INS, but they try to enforce the law as it is and were prevailed

upon to do otherwise. I think this is really basic to our immigration policy.

I think the definition is good, with certain modifications that I have indicated.

The description of "refugee" is the international description. It complies with the United Nations suggestion. However, what is happening in Southeast Asia is a travesty. We are seriously damaging the U.S. credibility. We are seriously hampering the United Nations in its efforts to eliminate the problem. We have become the major part of the problem and we are not the solution any more.

In the beginning we were the solution. We were trying to do what was right, a humanitarian gesture, dealing with people who are bona fide refugees, who had been put in a difficult position, many of them, because of their association with efforts of the United States. These were people who had specific reasons to be given special consideration by this country.

In the last few months the nature of that has been changed. It has been recognized by every other country dealing with it and by the United Nations, and recognized by the international press. For some reason the press in the United States has made very little of it or hardly acknowledged it at all.

We have made a fundamental change in Southeast Asia, and it is not fair because many of those people have no more right to come into this country than the Haitians do. The Haitians are pleading economic difficulties and so are 80 to 90 percent of those coming out of Laos, Vietnam, and Cambodia. Yet INS is required by the Attorney General to give them a blanket classification as a refugee.

That not only lets them into the country, as compared to what is happening to the Haitians, but it gives them financial support. It brings them here at our expense. The American taxpayer pays for it. It assures that they will be sustained for a period of years in this country at the American taxpayers' expense. On the other hand the Haitians, who have the same reason for leaving their country, have to fight through the courts and probably most of them will be excluded, as they should be if they are economic refugees.

We have really made a mockery out of our whole refugee system. This is not unusual. This is the way we have operated our immigration practices now for years. And that is why we are here today. However, the American people are becoming increasingly more aware of it, and they too would like something done.

I think that a basic ingredient of any new policy, is first of all specifically defining what refugees are and what asylees are, and then having an evenhanded approach to dealing with them. We are not doing it at the present time.

Senator SIMPSON. A couple more questions, which I would also direct to Lawton and Paula, concern the fact our principles of immigration in America, our policies, place a very high premium on family reunification. We addressed these principles during the Select Commission and do not want to be opposed to them.

And yet we have problems with the definition of nuclear family. The definition of nuclear family in Asia is not the definition of nuclear family in America. If we are going to define these things, I

think they should be defined under the laws of the United States of America, not under those of some other country. That is my view, a totally personal one.

But we do place a high premium on family reunification. And an interesting statistic as we churn through this issue is that while we desire that immigrants come here to join our work force, about 85 percent of them come here for family reunification and are therefore outside the scope of labor certification procedures.

What I would ask is, If we were to disperse these large numbers of Cubans or Haitians to other areas in the United States, do you think it is likely that many of them will simply return to Florida in order to rejoin their families or friends, and that future refugees will also continue to come?

What do you believe we should do either to prevent that or to assist your State in that regard? Any thoughts?

Senator CHILES. Well, the Haitian problem may be a little different, because originally the Haitians were actually going to New York, some into New Jersey. They were not all centered in Florida. This was when they were coming over sort of in dribbles. But it goes back a number of years, really.

Once the situation got in being, I think more what brought the Haitians to Florida was the hearing situation and the fact that the court for a long time simply did not rule. And you know, the word went back to Haiti, if you come to Florida there will not be any hearing on your case and you can move in that way. So that seemed to trigger it.

The Cuban situation is a little bit different. We do have some experience with that. Going back to the original Cuban exodus, back into the sixties they like Florida. It is close to Cuba, the climate is closer. Now there is an international community or a Spanish-speaking community in south Florida.

And almost every wave that came since the sixties—I remember we had a group that was in Spain and the proposal was to bring those in. There was like 14,000. But we were told in Florida, you do not have to worry, we are going to disperse these across the country; Chicago is going to take some and New York, and so this is not going to place any additional burden on Florida. It took just a period of months and you could almost trace the whole 14,000 right to south Florida.

This is where their friends and relatives were. This is close to Cuba. The climate is the same. So I do not know how you are going to disperse the Cubans.

As I say, you may be able to disperse the Haitians. But once the community builds, that is where they are comfortable and that is where they are going to be. Then I think it is what can you do to make sure that the Federal Government pays its responsibility to the burden that falls and keep—you know, bringing these mass exoduses to a stop.

Senator HAWKINS. I think you have two problems. No. 1, the Haitians can go back and they will go home. The Government says they will take them back, they are not going to punish them. They are not fearing any reprisals if they go home, if they go back to Haiti. So that is one thing.

When you talk about Cuba, Castro was in charge of the Cuban exodus. He says who can leave and he says who cannot come back. So you have a different problem when he selects who can leave.

And under the family reunification that we have had over the years, the law-abiding Cubans that have rebuilt Florida, that are the backbone of our industry and of our small businesses in the State of Florida, especially in south Florida, looked forward to that that elapsed and they could ask for their immediate family to come.

But now with this mass exodus that you had that Castro chose to send to the United States, if indeed they have the opportunity now and are given asylum, they could after 5 years send for their immediate family—and I say "immediate," because I know there is the nuclear family and there are second, third, and fourth cousins. I am against that. I believe immediate reunification, immediate family, is what we should talk about when we talk about reunification.

But we have had many instances where they have waited 5 years for their mother and father to come and their mother and daddy did not like it and they wanted to go back to Cuba. And you know, they are not accepted back.

It is a touchy situation, and we have had a lot of calls this morning from Miami, after the policy was announced yesterday. The President's proposals require Cubans who arrived during Mariel to wait 5 years. And that distressed those law-abiding Cuban families that were looking for the opportunity to bring in what we call their immediate family.

And you are not going to keep them away from there. They are going to go back where they speak Spanish.

Senator SIMPSON. That is very true, and we will be pursuing that one, not only with regard to this issue, but with regard to amnesty, and the temporary worker program. I believe that the time limits on those programs are entirely too long if participants are to be denied the right of family reunification.

Just two final questions, kind of a double header, since the baseball season is starting again—and they will need to play one every day, I think, to catch up with where they left off.

Could you elaborate—this is directed to the former Attorney General—on the administration's policies regarding interdiction of boats on the high seas and the preventing of U.S. vessels from bringing in persons without legal documentation? To my colleagues from Florida, what might be done from a national or State perspective to gain cooperation from those who are in business in Florida, Florida boat owners, in not actively transporting aliens during a mass asylum crisis?

Mr. Civiletti, I know that the Carter administration persued interdiction in a very limited way. I believe you shared with me once that about 18 vessels were interdicted.

I would appreciate your comments on the issue of the illegal use of boats and interdiction, and perhaps some sanctions and penalties against that. All those elements are being considered and are part of the President's policy.

Mr. CIVILETTI. There are three quick points about interdiction. The first is that at sea it is extremely dangerous, dangerous from

the standpoint of the human life of the people that you are trying to interdict and either evacuate or tow. So it is a very touchy kind of power to use, even if you have it to use.

Second—and in most of the Mariel situations and in the Haitian situations, the Coast Guard's judgment was, even if we have the authority, it was too dangerous. We will lose 100 people here, 100 civilians, men, women, and children will go right down.

Third, legally the probable cause necessary to use the limited authority we have to interdict is fairly substantial. I mean, you have to have facts to indicate that these people are coming to the United States, that they are illegal, and so forth. And when you get away from the shores of the United States and people are out there in the middle of the sea you can suspect and believe that they are coming here, but your proof sufficient to sustain it lawfully in a court that challenges you is difficult.

Fourth, I think is the matter of resistance, when there is resistance, aside from the danger and the nature of the sea and the overcrowding of the boats and the limited seaworthiness of the vessels. In other situations such as with Cuba and perhaps ones that we are not even thinking about with regard to Haitians and Cubans, it is internationally very dangerous and delicate, and can produce an enormous blowup which is twice as bad as what you are trying to eliminate.

So I think that interdiction is a touchy kind of situation, and I do not think you can look for it to be a meaningful and total remedy on the seas. I think that to the extent that it is utilized in terms closer to patrols, turnbacks, partial blockades, surveillances, that is much more healthy and may accomplish the same ends. But actual physical interdiction at sea itself is troublesome.

Senator SIMPSON. As I indicated yesterday I think that just this statement of policy from the President of the United States will be a helpful signal to send. Hopefully, it will.

Do my colleagues of the Senate have any thoughts on interdiction?

Senator HAWKINS. I just know that we have been working for so long, and Senator Chiles is in the forefront because of the entryway that we are in Florida for drugs, and we have legislation pending that the Coast Guard could actually stop ships that they see, that they may suspect of having drugs aboard. It is very akin to that in my mind.

How do you suspect a ship that you are looking at has drugs aboard? If it takes legislation to go look at a ship or have someone aboard a ship who understands the drugs, it certainly seems much easier to me to see people on the deck of a ship than to decide what kind of cocaine or whatever it is that they have got on the boat.

I think the message sent out yesterday that they were going to interdict is going to stop a lot of ships already, No. 1, if they say they are.

No. 2, interdiction is a delicate issue. Perhaps we should use a different term. Maybe we need to escort them home. Perhaps we should just get a bigger ship and ride up beside them and take a couple back.

I guarantee you, the Haitian Government says that if we were to escort several of these shiploads back to Haiti, word would go out.

We are just going to have a U-turn and come right back. And they will stop. We should send out a psychological signal, and I believe the message would travel quickly on a little island.

Senator HUDDLESTON. I think that is very important, the kind of signal that we send to the rest of the world, Mr. Chairman. The last Cuban influx in my judgment could have been stopped in its earlier stages. There is no question that there was great encouragement given early in the exodus, before anybody knew the extent or the size of it. And then it very quickly mushroomed into something that you could not deal with physically.

We have the authority to confiscate boats or any other vehicle that brings people to this country illegally. Ben Civiletti used it in that situation and helped to wind it down as a result. If it had been used the first day, it could very well have greatly reduced the magnitude of the problem.

But my main point is, because of our very liberal policies; because of the unenforcement, the word is out around the world. As a result we have created a refugee industry throughout the world.

I feel confident that just the administration's announcement yesterday will have some effect for a while, but we will have to put it into law and put it into action for it to be lasting. If there is an understanding that admission to this country is not automatic, that there are proper procedures that will be enforced, that there is not a great job waiting for everybody who lands, that there are not welfare checks available for everybody, it would discourage the kind of influxes that we are having right now and have had.

Senator CHILES. I just have to second what they said. Remembering back that everybody's hindsight is a lot better now, in the Mariel crisis, looking back, and that we all can second guess it.

But there were really two distinct phases to that. One was the initial breakout in which Castro said he was going to allow people who wanted to leave the island to go, and suddenly there was a spontaneous desire for this family unification. And it was really a spontaneous move. Some fellows said, I am going to take my boat and go over there and get my family, and that word went up and down through the community and people that had never thought about getting a boat went and bought a little boat or something. And those were little boats. It was a massed flotilla and I think that would have been very, very hard to stop at that time.

And that was the sort of signal—that is when the authorities in Dade County said to the administration. If you try to stop that, you are going to have blood on your hands, in effect. That after a while, though, built into a situation where, for example, my office would get phone calls from a fellow that says. Look, I own some shrimp boats and I have got a captain that is on his way to Cuba, because he says the shrimping is not very good now and he is going to pick up $500 a passenger over there. And I want to know before he gets there, is my boat going to be seized or not.

And, of course, you could not get an answer for him that his boat was going to get seized. And before long the greatest numbers that came out were not the little ones that came on the motorboats. It was when those other boats got loaded to the gunwhales by Castro when they got there, because the signals were not right to start with and we did not stop it at the right time.

Now, I think that everything that former Attorney General Civiletti says is true. We do not want having a bunch of people drown at all, and we do not want it to be that kind of situation.

But as I talk to Coast Guard authorities, and I talked to a number of them and they tell us what happens, now with the Haitians, for example, the minute those boats come into our water they are approached by the Coast Guard. There has not been one act of violence, there has not been one act in which anybody tried to get away from the Coast Guard by the boat. And if you tell them, go there, they go there. If you say follow this boat, they follow this boat. You tell them exactly what you want them to do and that is exactly what happens.

And that is what I found out from the Coast Guard commanders that I talked with. And I think it is the signal that you are going to send now, that you should not sell your farm and pay $1,000 or $2,000 for passage, because you know you are going to get sent right back. And once you stop that, you know, then maybe there will be a trickle flow that we will be talking about again, and that will be bad but it will not be 500 a week.

Senator SIMPSON. Well, I really appreciate your presence. As you can see, we have a full plate of activity in this subcommittee, and I am going to just get my schedule conformed with my other duties and I intend to have a long series of hearings in September and October. Congressman Ron Mazzoli, the very, very fine House Chairman there from the Third District of Kentucky is doing the same.

We are just going to continue to pursue it, and we are going to get into all the hot stuff that always seems to get left somewhere in the process, including issues like we have talked of today.

We will have immigration attorneys from that area here, and we will pursue the possible misuse of the legal system, interdiction and enforcement. We will also discuss due process and the things that make us proud as a country, which are usually discussed in connection with people who are here legally or citizens. Somehow we have slipped away from that, and we talk about those things that have made this country what it is, but we are applying them to people who are here illegally. How totally illogical.

I believe some kind of an identifier system is going to be required to gain control over illegal immigration. I feel very strongly about that although I do not know what it will be at this time. But when we get into that issue, it is nice to know that the editorial boards of the Washington Post and the New York Times agree on that with each one of us in this hearing room today.

We have got to have identification systems; otherwise employer sanctions will never work, and we must have employer sanctions to reduce the incentive for illegal immigration.

Well, thank you so much for a very serious discussion.

Senator CHILES. We are awfully glad that you are sitting where you are sitting and that you are going to spend the time and effort on this. That is very, very comforting to us.

Senator SIMPSON. I assure you I will.

Thank you so much, all of you. The hearing will recess until 2 o'clock, when we will proceed then with public interest groups and

Representatives Chisholm and McClory. That ought to be a good session.

[Whereupon, at 12:54 p.m., the subcommittee was recessed, to reconvene at 2 p.m. the same day.]

AFTERNOON SESSION

Senator SIMPSON. The hearing will come to order, and we will continue with our agenda. On this afternoon's agenda, speaking to the issue of the United States as a country of mass first asylum, we have Congressman Robert McClory of Illinois, who is the ranking member of the Committee on the Judiciary in the House of Representatives, and who served with me on the Select Commission on Immigration and Refugee Policy and has been most helpful. We are looking forward to your testimony. I know you have a time problem, so if you wish to proceed, Bob, please do so.

STATEMENT OF HON. ROBERT McCLORY, A REPRESENTATIVE IN CONGRESS FROM THE 13TH DISTRICT OF THE STATE OF ILLINOIS

Mr. MCCLORY. Thank you very much, Mr. Chairman, and I want to state that I am delighted to have the opportunity to testify before this distinguished subcommittee and to commend you, Mr. Chairman, on your leadership and your active participation in the work of the Select Commission on Refugee and Immigration Policy on which, as you stated, I had the privilege of serving with you. I might say that we were able to complement each other, c-o-m-p-l-e-m-e-n-t, from time to time, and to cooperate with each other with respect to the various recommendations that were made by the Commission.

And now, it seems to me, we have the responsibility of implementing any of those recommendations, and this particular subcommittee is charged with the heavy responsibility in that respect.

I am interested also that just yesterday the President of the United States announced his recommendations with regard to the subjects of immigration and refugees, and so that the testimony that I am about to give will be in line with that background of broad recommendations by the President.

Last year I shared the consternation felt by most Americans at the arrival of 205,000 persons from Cuba in direct contravention of American law. We did not know what to call them. They were not immigrants, they were not refugees. Finally, President Carter described them as entrants because they entered on our shores. Our national sense of outrage at this direct affront to the right of a sovereign country to control entry must now be translated into determined action designed to forestall the possibility of a recurrence. The sense of compassion and concern that Americans have demonstrated toward the Cuban people cannot be questioned. The United States recent record of having accepted over 700,000 Cubans prior to the Mariel boatlift represents a reaffirmation of our dedication to promote the reunification of families and providing refuge to victims of oppression. It is not the additional figure of 205,000 Cubans that so affronts us as a Nation, for we might well have been willing to facilitate the admission of at least that number

after appropriate screening, but rather the way in which our laws were flouted.

Although the mass Cuban migration is now behind us, and we hopefully will institute measures to prevent a repetition, the arrival each week of hundreds of undocumented Haitians remains a continuing challenge to American law and to American control over our national future.

I am aware that during the period that the Cubans were arriving in such large numbers, that there were likewise Haitians arriving at that time, and there was a strong feeling then, and I believe that the feeling was justified, that those arriving from Haiti were treated differently than those who arrived from Cuba. And I think with regard to undocumented migrants who arrive on our shores, they should be treated equally, and I do not think they were at that time.

The Office of Refugee Resettlement places total known arrivals from Haiti as of July 26 at 17,235 persons, a figure which many believe represents perhaps only a third of the actual number of Haitian nationals that have arrived illegally in this country. The figure for the 3-day weekend just passed is 226 known arrivals, once again perhaps only a fraction of the total illegal Haitian immigration. Statistics demonstrate that the flow from Haiti, far from abating, actually has been increasing.

The administration and the Congress confront two basic problems. We must address the issue of the status of Cubans and Haitians already in the United States, and we must adopt firm measures for handling future illegal migrations to this country. And I think the conservative estimates of the potential persons who might arrive just from the Caribbean area alone reaches a figure of about 5 million. So we are not dealing really with just Cuban entrants or Haitian entrants, but we are dealing with those who would come from throughout the Caribbean area.

Those Cubans and Haitians who were encountered by the Immigration Service prior to October 10, 1980, possess a special designation as Cuban/Haitian entrants. The overwhelming percentage of these people have been resettled permanently in the communities and the United States, consistent with its humanitarian traditions, cannot uproot them.

Cubans who have not been resettled, however, present a different problem and require a different response. Fort Chaffee holds 751 Cubans who generally cannot be resettled in a normal community environment because they suffer from disfunctional conditions or exhibit antisocial characteristics. I would call to the attention of the subcommittee that last year when we discussed the subject with many of the illegal aliens, the illegal entrants from Cuba, that one of the witnesses before our committee was a former prisoner in a penitentiary in Cuba, and he testified that on the day that he was carried by bus from the prison to a boat waiting for him at Mariel Harbor, that there were 5,000 persons in that jail who were invited to leave providing they would enter boats and come to the United States. And so we have potentially 5,000 Cubans in that group alone who came to the United States who were incarcerated in Cuba, not for crimes of a political nature, but for the crimes of robbery and burglary and rape and assault and all of the other

kinds of criminal activity with which they were charged and thereafter incarcerated. These persons that are still incarcerated here in the United States did not get that way as a result of living in the United States, but unfortunately, they were part of this mass migration. Many of whom were picked from the streets, and were the undesirables of Cuba that Castro wanted to get rid of, or they were the criminals who were taken from the penitentiaries in Cuba.

Most of these people arrived on our shores because Castro, in outrageous disregard of the principles of international law, used the United States as a dumping ground for his jails. They are hardcore incorrigible lawbreakers rather than individuals wrongly incarcerated in Cuba.

American communities must not be made to bear the brunt of accepting such disfunctional and antisocial inhabitants as we have at Fort Chaffee, or the criminal population which remain in some of our Federal correctional facilities. Every effort must be made through international pressure and diplomacy to repatriate these two groups to Cuba. In the meantime, institutionalization and detention remain the only answers for a substantial percentage of these people. Individuals who pose a threat to American communities must not be released. The high murder rate which has been experienced in Miami is just an example of these incorrigibles, of these criminals being foisted upon our society and our Nation; and the result is that we have had an unprecedented incidence of violent crime in that area largely as a result of that experience.

Illegal immigrants encountered by the Immigration and Naturalization Service since October 10 last year enjoy no special status and remain subject to exclusion and deportation proceedings. Appropriate resources must be allocated to conduct administrative hearings expeditiously within the limitations of court decisions. The credibility of our deterrent to future flows depends in substantial measure on our capacity to remove persons who have no lawful claim to remain in the United States. This country, however, must deal more firmly with Americans who participate in illegally transporting people to our shores.

The effort to prevent arrivals will require intensive bilateral and multilateral negotiations directed at: one, obtaining the cooperation of sending nations in preventing initial departures; two, discouraging the passage through third countries of migrants headed for the United States; and three, facilitating joint efforts on the high seas to intercept illegal migrants. Persons who manage to reach the United States must not be permitted to remain in this country for an inordinate period while an overburdened quasi-judicial system flounders under an excessive caseload.

The Immigration Service must receive the needed resources to facilitate prompt determinations of asylum claims. Serious consideration should be given to the proposal of the Select Commission on which the chairman and two members of this subcommittee and I served, for the creation of asylum admissions officer to adjudicate asylum matters administratively. A single appeal should be accorded in deference to a recognition that any initial adjudicatory decision can be erroneous, but that appellate review must be conducted promptly and provide the final answer to challenges of excludability.

This subcomittee should be applauded for taking a hard look at past American policy toward Cuban and Haitian migration and for addressing a problem of major concern to the American people, a people that have achieved greatness in large measure through dedication to the principle of the supremacy of the rule of law. The United States has faced many crises in the past that have challenged our capacity to resolve national threats within the constraints of humane principles. I am confident that we are a nation capable of controlling our own shores.

Congress must press relentlessly in the months ahead to reassert American control over immigration policy. Other countries in this hemisphere must be encouraged to shoulder their fair share of the burden of resettling people legitimately fleeing from persecution. We can deter people intent on violating our law by demonstrating a firm commitment to its enforcement, and we can deal promptly, fairly, and resolutely with those who refuse to be deterred.

Thank you, Mr. Chairman.

Senator SIMPSON. Well, I thank you very much, Congressman McClory.

I know of your deep sincerity and interest in this issue because of our service together, as I say, on the Select Commission. And I think you and I are both pleased to see that the issue has finally left the arena of recommendations and white papers and theoretical objectives. Now it is in the only arena where it is going to be resolved, and that is the political arena of the legislative body. What pleases me most is to see that there is no smattering at all of partisanship in the issue, just a lot of real concern throughout the United States. And that is going to be reflected through our voting patterns on the issue. Hopefully we can do it right and without injury to minorities while giving special care, as I have said before, to the Hispanic population who are the most fearful about any immigration reform. I know you share those views.

In your testimony you emphasize the need for some type of orderly processing during mass asylum crisis, an element that was certainly lacking during the Mariel boatlift, as you testified so clearly.

What steps do you feel we should take to insure that we have orderly processing in the future, and what is your thought about these holding centers and detention centers?

Mr. MCCLORY. Preferably, Mr. Chairman, the processing and the screening should be done before any of these refugees reach our shores. Once they have reached our shores the problem becomes extremely difficult as far as repatriation or deportation, and that is the problem that we are having right now. How to repatriate Cubans without the consent or the cooperation of Castro is a large question for which I do not have the answer.

But it would seem to me that in order to prevent us from reaching this dilemma, it would be preferable that we have just any kind of an asylum center which is not in the continental United States. Preferably such a center would be in the area of the country from which the refugees are seeking to come, and that they would be screened there.

The Southeast Asian refugees are received in a place of first asylum in that area of the world, and they are screened there by

the public health authorities, by the State Department and others before they are given the status as refugees. And that should be the pattern.

I think that it may be more difficult to handle that in the Caribbean area, but we should find the ways and means for doing that.

Senator SIMPSON. What are your views on the involvement of military personnel by pulling them into temporary duty during such a mass asylum crisis?

Mr. MCCLORY. Well, I feel very definitely that we should use the military to interdict any persons who are undertaking to reach our shores and enter our country illegally. They should be interdicted, they should be deterred, they should be returned to the place whence they came. If we do not do that, why, the subject is beyond our control because they will just continue to come, and we will just have a continuing experience such as we had with the boat flotillas from Cuba.

I might say that some of the other testimony before our committee on the part of the boatowners was that they were told, the owners of these boats that went down to Mariel Harbor and picked up the refugees, that the Coast Guard and the Immigration Service would wink at their violation of the American law, and therefore they were given tacit approval to go there.

Now, that is an outrageous thing to happen, but without that kind of tacit approval, you cannot imagine how many boats, 5,000 or so boats going down there and risking the penalties that are in the existing law. And I do not think many of them did experience the tough penalties that are in the law.

Senator SIMPSON. What is your position on the status of Cubans and Haitians who arrived last year? What are your feelings about that status?

Mr. MCCLORY. Well, I agree that except for those that it is not capable for us to accept into our society because of criminal records or because they are mental or defectives in some other way, that we should support providing them with an opportunity for applying for permanent residence.

Senator SIMPSON. There has been testimony, and you have spoken out on it before, on the need for intensive bilateral and multilateral negotiations to handle a migration crisis.

How best might that be carried out in your mind, and do you see a role there for the United Nations High Commissioner for Refugees or the Intergovernmental Committee on Migration?

Mr. MCCLORY. I feel definitely that there is a role for both the High Commissioner and for ICEM in helping to provide the forum through which we can have bilateral and multilateral discussions. It should be easier to handle this with the Haitian Government than with the Cuban Government, but even with the Cuban Government, it seems to me that we should press forward, and likewise we should secure the cooperation of other Latin American countries. Actually, the other Latin America countries are better able to absorb and assimilate the Cuban refugees than our country is. They have a culture and language which is more compatible, an environment that is more compatible, and I would hope that we would get some cooperation there.

I might say that last year, I think it was, when we were experiencing this migration from Cuba and we were being told that efforts were being made with other Governments, I conferred with one of the Latin America ambassadors, and he just said he never had any contact from our Government on this subject at all.

So I think we do a lot of talking about multilateral action, but I think the steps have been very minimal up to the present time.

Senator SIMPSON. There was testimony this morning not only from the members of the Senate, but also from the former Attorney General, which comes up continually, and especially more so now in the legislative hearing process than in the Select Commission process. This testimony addresses the question of whether we should pursue a policy of tying development aid or monetary assistance to these migration issues, based on the activities of those countries and how they are responding to the mass asylum and refugee-generation issues.

Any thought on that?

Mr. MCCLORY. I do not know that I know how to answer that. I certainly would not want to promise some foreign aid as a quid pro quo for some other country detaining someone in that country. That is a hard thing to answer.

I think that an aid program, especially programs that call for private investment, investment of private funds to try to improve the economic status of Latin American countries, would be very useful and would provide for more employment there and less inducement for wanting to become a refugee.

Senator SIMPSON. It is of interest that one of the Senators indicated today that he would prepare and submit an amendment to do just that the next time we consider the appropriate legislation.

Mr. MCCLORY. Well, we have the Inter-American Foundation, which is a very useful agency, which does employ mostly private funds. It is a kind of a people to people program. That possibly could be expanded. Right now it is fighting for survival. But it has been very useful as far as taking private funds and private foundation funds, private corporate funds, and utilizing them throughout Latin America through responsible groups there and individuals there and organizations there that promote the economic improvement, the economic lot of the people in the area.

Senator SIMPSON. I know that you have a time problem, but I have just a couple more questions because I seek your good thoughts and counsel on this.

Do you favor the creation of a Western Hemisphere Council on Migration? The President has talked of that, a Caribbean basin development system something along those lines.

What is your thought on that?

Mr. MCCLORY. If that would be the inducement for other Latin American countries to enter into an agreement with us to try to resolve this problem of the exploding populations in the Caribbean, yes, I would very much favor that.

Senator SIMPSON. And a final question. Do you have any views on the changing of the definition of the word "refugee" or the changing or amending of the word "persecution" under the law?

Mr. MCCLORY. Well, I thought that when we adopted the Refugee Act of 1980 that the definition that we employed, which was the

same definition which I believe the United Nations employs, was an appropriate definition, and I think that the problem we had with the Cubans coming in here particularly is that they did not meet that definition, and I do not think they should have met that definition since I do not think they were legitimately refugees.

So I would hesitate to expand the definition of refugee beyond that which involves political persecution or oppression or whatever the other part of the definition is.

Likewise with regard to persecution, I think that we have to limit the persecution, too, to actions that are taken and not some individual sense of some abstract sense that the individual might have of feeling persecuted.

Senator SIMPSON. I thank you very much. It is good to have your testimony, Bob. Thank you.

Mr. MCCLORY. Thank you very much.

Senator SIMPSON. Now, it is a great pleasure to have Congresswoman Shirley Chisholm of New York representing the area around Brooklyn where I used to actually go to Abbott's Field in my youth, I remember. I was one of those.

And you, certainly, Congresswoman, have a high sensitivity to the national problem and to the concerns of the black community. I know that you serve as the chair of the task force on refugees of the black caucus. You are very well respected by your peers, and your voice is heard. We are very interested in your testimony, please.

STATEMENT OF HON. SHIRLEY CHISHOLM, A REPRESENTATIVE IN CONGRESS FROM THE 12TH DISTRICT OF THE STATE OF NEW YORK

Mrs. CHISHOLM. Thank you very much, Mr. Chairman.

Mr. Chairman and members of the Senate Judiciary Subcommittee on Immigration, I am very pleased to have been asked to testify today on the subject of mass asylum proceedings. I am appearing here today in my capacity as Chairperson of the congressional black caucus task force on refugees which was initially formed in July 1979 to address the discriminatory treatment of Haitian refugees, and the task force has now broadened its concerns to include African refugees as well. As chairperson of this task force, I wish to commend you, Mr. Chairman, for addressing the issue so early in the 97th Congress.

Mass asylum, of course, is a new concept for U.S. Immigration and Refugee Law. The genesis of the current crisis in this area results from the fact that when Congress adopted the Refugee Act of 1980, the act was silent on the issue of the United States as a country of first asylum. Needless to say, the Mariel exodus and the continuing flow of Haitian and Salvadoran refugees has now focused attention on this first asylum issue very quickly. And because of the public anxiety about the impact of Cuban and Haitian arrivals, we all feel a need, and know that there is a need to address this problem in our country. As a country of first asylum, in our rush to respond to public concern in this area, I believe that it is important to remember that the influx of 120,000 Cubans from the Mariel exodus in some ways was a unique phenomenon which

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must be examined in a different context from a general review of country of first asylum issues.

I am, of course, concerned that we become better prepared to handle another massive influx of refugees over a short period of time, as occurred with 100,000 or so Cuban refugees arriving in a 2- to 3-month period. Again, I view this kind of situation as a somewhat unique crisis which might require very different solutions than those we established as part of our policies as a country of first asylum.

Our problems, as I view it, with first asylum issues, largely stem from our inability to accept this definition without political qualifications. As a country, the United States has been far more interested, in my humble opinion, in responding to refugee concerns when we gain some political benefit than addressing deep-seated humanitarian need. In fact, only in the case of Cubans, and to a lesser extent, Nicaraguans, has the United States responded positively to its obligations as a country of first asylum. In both cases, we perceived that it was in our political interest to accept Cubans as refugees and to grant extended voluntary departure to Nicaraguans.

For example, Haitian political prisoners who were released from prison through the intervention of former U.N. Ambassador Andrew Young, were dissuaded by our own State Department officials from applying for political asylum in the United States. In this instance we obviously saw no political gains from accepting Haitian political prisoners.

Geopolitical considerations reveal far more about why we have prejudged Haitian asylum claims as somewhat frivolous in some respects, and rejected Salvadorans as refugees than any other explanation. These considerations then begin to raise the question generally of whether we have equal application of our refugee laws or differential treatment.

Now, let me cite a few examples.

The United Nations High Commissioner for Refugees considers all Salvadorans outside their country refugees under the U.N. Protocol. The United States, our Nation, stands alone in the Western Hemisphere in its rejection of Salvadorans as refugees with this same status. We make a mockery of our previous calls to the international community to internationalize the refugee problems in Indochina and most recently with the Mariel exodus. And despite the positive response of other countries in the above cases, we are perfectly willing to allow Mexico and Central America to bear the total burden of some 180,000 Salvadoran refugees. We are willing to return Salvadorans to a civil war situation where they face almost certain death or harm.

My question is, is this policy equal application of the law or differential treatment?

On the other hand, the U.S. Government has tried repeatedly to erroneously characterize the UNHCR's position on Haitian refugees as supporting their perspective that Haitians are generally economic refugees. When UNHCR made a determination that some refugees were economic, the United States then rejected this analysis when it suited our political interest to do so. For example, the Joint Economic Committee only last year found evidence that

when UNHCR supported efforts to separate economic refugees who would be returned to Laos, from political refugees who would be placed under UNHCR's jurisdiction, this policy was not implemented, largely due to American opposition.

Therefore, it would seem on the basis of these circumstances from time to time that our country is perfectly willing to accept economic refugees when it is politically expedient. And further, whenever there has been a gray area in this debate over whether a person is a political or economic refugee, some percentage is usually stated as to the number of persons who did not qualify for refugee status. For example, UNHCR estimated that approximately 25 percent of the latter were Indochinese refugees. Our own State Department officials in recent days have been quoted as saying that 30 percent of the Polish refugees applying to the United States did not meet the test for refugee status. In the case of Haitians, however, apparently so few Haitians have been able to meet the test for refugee status that no one even bothers to give estimates regarding the percentage of Haitians who would or would not qualify for refugee status.

In this gray area, because it is a gray area, I find it rather difficult to believe that Haitians are dramatically different from the latest waves of Indochinese and Polish refugees, and yet we have seen no acknowledgement that some Haitians may in fact be true political refugees.

Again, is this equal application of the law, or is it differential treatment?

Now let me discuss for a moment my reactions to some of the recommendations for handling first asylum cases as well as some suggestions for different approaches in this area. I am aware that there is a lot of discussion about eliminating federal court jurisdiction over asylum claims to prevent any future cases like the *Haitian Refugee Center* v. *Civiletti* case. These changes in the court jurisdiction, of course, are being proposed under the guise, may I say, of streamlining the process. The real motive here, however, as I view it, is to cut Haitians' access to the courts. This action, of course is in response, I believe, to the success of the Center's lawsuit and other lawsuits brought on on behalf of Haitian asylum claimants. These cases were brought on the principle of national origin discrimination which, from my earlier discussion, seems to be somewhat operative in our refugee policy.

So consequently, I do not believe that anyone can view these lawsuits as merely frivolous attempts to stall deportations.

Asylum applicants who face bias in our refugee policy must have every opportunity to assert their asylum claims. I believe that part of the movement for court restrictions in this area is a belief that persons like the Haitians and the Salvadorans are not really seeking admission to the United States as a country of first asylum, but are only trying to secure economic opportunity here. I have included, in appendixes attached to my testimony, examples of Haitian cases which clearly indicate that Haitians have fled here with legitimate asylum claims.

Let us remember that the Haitians' successful court challenges did not occur in a vacuum. These challenges have been in direct

proportion to the discrimination that Haitians have suffered at the hands of INS and State Department officials.

I have been involved, you see, in this whole Haitian situation for over 10 years of my life. That is why I have distinct feelings about the issue. I hope that Congress has not reached the point where we are ready to punish the victims of discriminatory policies for successfully opposing these policies. I would urge that this committee reject any attempts to prescribe limits on Federal court jurisdiction as they relate to the kind of discrimination which was really the genesis for the successful Haitian court cases.

In response to proposals for interdiction on the high seas, which is one of the recommendations that just came out day before yesterday, I can only say that my colleagues in the Congressional Black Caucus and I view such proposals with the utmost horror.

I would remind this committee that our country—and I love this country as much as everyone in this room does. We love our country, but we must never be afraid to speak out against its inequities and the grievances. But I have to remind all of us that our country has already stained our record as a nation which believes in the concept of freedom and justice for all people in a very similar situation.

Recently ABC television aired the film "Voyage of the Damned," a reenactment of the voyage of the SS *St. Louis* which carried 930 Jewish refugees from Germany in 1939 in search of a country that was willing to accept them. And as reported in the Richmond Times-Dispatch at that time:

> The failure to take any steps whatever to assist these distressed, persecuted Jews in their hour of extremity was one of the most disgraceful things which has happened in American history and leaves a stain and a brand of shame upon the record of our nation.

Not only was no effort made to assist these refugees, but the U.S. Coast Guard was under orders to prohibit any refugees from jumping overboard and swimming ashore. And these Jewish refugees sailed close enough to American soil to see Miami's city lights, and yet our Government refused to let them land.

Now, unless we are prepared to repeat this disgraceful incident by taking actions which result in the persecution of persons just seeking refuge, interdiction should be unacceptable to all of us.

It would seem that our country has a double standard on first asylum issues when we urge the Southeast Asian nations to fulfill their commitments as countries of first asylum while we try to justify an interdiction policy on the grounds that the Government of Haiti says that it is willing to accept the return of its citizens. We have no monitoring mechanism for insuring that Haitians returned to Haiti will not be persecuted, and no guarantees that the Haitian Government will not in fact persecute returnees. In fact, all the evidence seems to support the belief that they will face persecution.

In July 1980, Judge James Lawrence King found that Haitians had a "well-founded fear of persecution" if they were returned to Haiti. Conservative foreign policy analysts have also acknowledged the threat faced by Haitians returning to their homeland. Phillip Abbott Luce, the Senior Research Fellow at the Council for Inter-

American Security, after a trip to Haiti in June 1980, found evidence that Haitians did face persecution upon return. And I quote:

> My trip to Haiti proved to me that there was a policy of repression against those who returned to Haiti. Even if the returned Haitian is not murdered, he is obviously a suspect and the Ton Ton Macoute will keep him under surveillance and without work. The repression of the individual in Haiti is as widespread as the Soviet Union.

That quote is from Luce's statement in "Haiti. Ready for Revolution," Council for Inter-American Security, found on page 15.

All I am saying is that the above evidence suggests that an interdiction policy would violate the principle of refugee movement as contained in the U.N. Protocol, because this policy is also in direct contradiction to the Universal Declaration of Human Rights which protects the right of a person to emigrate, a right which we constantly press upon the Soviet Union in an effort to force them to allow more Jewish and dissident emigration. Also the problem of adjudicating asylum claims on the high seas without prejudice is insurmountable. No independent body such as UNHCR would want to take the responsibility for making on-the-spot judgments about asylum claims. Consequently, INS and Coast Guard officials would be left with the responsibility for adjudicating these kinds of claims. And obviously, asylees fleeing by sea would not have a fair opportunity to assert their asylum claims as required by the U.N. Convention and Protocol Relating to Refugees.

Further, the dangers to the U.S. Coast Guard personnel as well as the Haitians, of physically towing boats back to Haiti or attempting to transfer Haitians onto Coast Guard vessels raises further objections to this proposal. In addition, the image of the U.S. Coast Guard vessels as the first indication of a return to gunboat diplomacy for the Caribbean could result in a tremendous setback for our foreign policy in the Western Hemisphere.

I believe a more acceptable policy has been suggested by an amendment to the Foreign Assistance Act of 1981 by the House Foreign Affairs Committee. This amendment ties all development assistance for Haiti to a responsible development program, an end to human rights abuses, and a reduction of illegal smuggling operations of people into the United States. On this last point, the Congressional Black Caucus has insisted that the Universal Declaration of Human Rights be observed as it relates to the right to emigrate. Under this amendment, then, the Haitian Government is largely responsible for satisfying these conditions if it is to receive development aid from us. And the onus then is on the Government of Haiti to enforce its own immigration laws and to halt human rights abuses. I believe that a policy which requires accountability from countries like Haiti offers a better deterrent to refugee flows than a costly and dangerous program of interdiction.

Finally, on the actual processing of mass asylum claims, I would suggest a simple solution rather than maintaining the tradition of individualized asylum proceedings, which could really be very lengthy. I would recommend that in first asylum cases, that we basically treat mass asylees as refugees for the purposes of processing. And specifically, we should simply discard the current interpretation of our refugee law that a person can only be classified as a refugee if they are processed overseas.

In first asylum cases, I have found no legal prohibition in processing such cases under the same standards we use for processing refugees overseas. In effect, mass asylum cases would be treated as "stateside refugees" with some prima facie assumption about the asylees' ability to meet refugee status.

To illustrate the impact of this change in present interpretation of our refugee laws, let us suppose, for example, that 200,000 Cubans and 40,000 Haitians had been treated as stateside refugees. We would have avoided this unknown status of Cuban-Haitian entrant; States and localities would have been fully reimbursed from the beginning without special congressional action; and Cubans and Haitians would have received equitable treatment with other refugee groups like the Indochinese.

Now, you may ask how would we implement this kind of processing? We could first internationalize any camps established to process first asylum cases so that the UNHCR could assist with the screening of these stateside refugees. Now, UNHCR would have to be able to function, of course, without restrictions on their consultation procedures for determining status. This change from the present detention camp atmosphere of Fort Chaffee and Krome would also help to encourage international resettlement for mass asylees. We should also remember that some of the Cubans from the Mariel exodus were admitted as refugees. Five hundred and forty Cubans were processed by the U.S. interest section in Cuba after the Mariel Harbor was closed. Were the questions posed to these 540 Cubans so different than the questions which would be asked by State Department officials 90 miles away? Were the answers Cubans gave so different than answers which would have been given by the 200,000 Cubans who were granted an entrant status? If the answers differed significantly or other issues surfaced which would prohibit refugee status from being granted, then refugee or first asylum status could have been denied.

In conclusion, let me say, whatever you do or whatever happens in this great Nation with respect to the final determination of status for Cuban and Haitian entrants, I find the administration's proposal for legislation to provide Cubans and Haitians with a renewable term entry card as a way of finalizing their immigration status totally unacceptable for the following reasons.

Since we now agree that none of the entrants will be returned to Cuba or Haiti the final determination of their status should be one already recognized in our immigration laws, not a status which continues the confusion created by the use of the term "entrant." The legislation appears to grant temporary worker status in a fashion that does not really differ from a 5 year extended voluntary departure status. The 5-year period unreasonably delays the resolution of these persons' status, and there is no rationale for a grant of extended voluntary departure status since these people will not be returned to their homelands.

Further, the English language capability requirement—and we must remember that thousands of people from Europe coming through the years, have not been able to speak English—the English language capability requirement for permanent residence violates equal protection standards since no other applicants for permanent residence are subjected to this requirement. Finally, the

legislation makes no provision for Federal reimbursement to States and localities who will obviously need to continue providing social services to many of these entrants.

I believe that the granting of refugee status is the most honest and equitable solution to the present crisis. I have reintroduced legislation from the 96th Congress which would grant refugee status to Cuban and Haitian entrants and those Haitians who arrived in Florida as of the date of introduction of the bill, May 18, 1981. I firmly believe that Cubans and Haitians meet the test for refugee status which is, according to the U.N. definition, in the Protocol Relating to Refugees, which is the fear of persecution upon return.

In the case of Haitians, evidence from various political perspectives supports this contention. And furthermore, a number of the original plaintiffs in the Haitian Refugee Center case were given political asylum after their asylum claims had initially been rejected, which suggests that there was merit to their claims initially.

Also, if the Mariel Cubans could not meet the strict test for asylum, how does one explain the admission of 540 Mariel Cubans as refugees who basically had to meet the same standard? Saying that they become refugees because we had an opportunity to screen them overseas does not explain why similar screening could not have been done stateside.

Finally, I hope whatever policies are proposed and adopted by this committee would reflect a concern for equitable treatment in our refugee laws. We cannot continue to play a shell game with people's lives because it is not politically expedient to grant them status as refugees. Further, we cannot dictate a standard for other countries on first asylum issues which we are not willing to enforce ourselves. We cannot hope to retain the respect and admiration of the world if our immigration and refugee policies are discriminatory on the basis of ideology or skin color. Our interests are best served at all times by a fair, consistent policy which respects the rights of all people.

Thank you.

Senator SIMPSON. Congresswoman, that was a very powerful statement. I heard it, and I appreciate it.

I have some questions, if I may address those. I hope that your testimony will be shared with the House subcommittee chaired by Congressman Mazzoli who I think is going to do a very fair and very fine job on this issue.

The bill you have introduced and have referred to calls for the immediate adjustment of status to refugee for those Cubans and Haitians who entered last year.

How do you assist us in responding to those who claim that such an action would serve as an incentive to many more persons from the Caribbean nations to attempt to find entry into the United States in any way they could with the hope, of course, of ultimately being granted the right to remain here permanently?

Mrs. CHISHOLM. I think that I could assist by pointing out that our Government really on the basis of substantiated testimony and documentation, has a collection of facts that indicate clearly that this group fits the definition of a refugee according to the U.N.

Protocol on Human Rights, and so forth, is a "well-founded fear of persecution upon return."

What has happened, I think, Mr. Chairman, is that part of the difficulty, particularly with the Haitian situation, is that our Government has never really accepted the fact that the Haitians were political refugees. We have always felt that they were basically economic refugees, and from that standpoint, of course, if our Government feels that they are basically economic refugees, we must have a special justification for giving them refugee status because just about every other country in the world, to a certain extent, would be sending all of their economically depressed peoples here.

But I think the testimony, the cases, the court trials, and all of the litigation that has come forth pertaining to the Haitian problem indicate that they do fit this definition of a refugee in our country. If this is so, then it would mean that we would have a basis or a premise on which to prohibit people from just coming here solely on the basis of economic need.

Senator SIMPSON. One of the problems—and it persists in the definition—is what you have given and what was given this morning in testimony on the description of the words "persecution" under the Immigration and Nationality Act and the U.N. proceedings, and there is more to the quote, and it says "the well-founded fear of persecution," not unquote right there. It goes on to say "on account of race, religion, nationality, membership in a particular social group, or political opinion." And that is the problem because it really does not say that you can include a person in the definition of refugee who is just scared to death of his country or the turmoil in his country.

And see, that is a very close point, and I am not a nitpicker, but that really is a tough one. We may have to redefine that issue of persecution or the phrase or the definition of refugee. But everyone that has testified, without exception, when they speak of persecution, mention a well-grounded or well-founded fear of persecution, and they stop. But the rest of the defition is very real.

Mrs. CHISHOLM. Let me respond if I can because of course it is a very complicated, very complex issue.

Let me say that I think we have said in this country that we have a deep belief and concern for human rights. We have said also that any group coming to the shores of this Nation at least should be able to have due process applied to them irrespective of what the inevitability of a particular outcome might be. And it seems to me that we are not talking about a situation in which these people probably want to come here just because of the economic reasons and because of the fact that they may be of a certain nationality or ideology, or because of their own definition of a fear that they might have themselves as individuals.

We are dealing with a particular rightwing nation in the Western Hemisphere which has a history that indicates quite clearly that the human rights have been violated persistently and consistently. And perhaps we have no right to be intervening internally with any country as to what form of government it desires to have and how it wants to treat its citizens, but I do think that if we ourselves as Americans believe in human rights, that we can then

have the responsibility of not providing the thousands, the millions of dollars to a country that substantively over a period of time has been violating the human rights of its own citizens, because we as Americans say that we believe that this is a part of our own beliefs about the dignity of every human being.

I am not saying that we can tell countries how to act and what to do, but I am saying we have some indirect ways of letting countries know that we are deeply concerned about this. And above anything else, we must not be selective in terms of whose human rights we are going to pay more attention to in some countries as contrasted to other countries. And that is what bothers me.

Senator SIMPSON. Yes, and that is part of where our problems will lie as we try to draft legislation, because as we expand that definition of the word "refugee" and see how many it includes throughout the world, then obviously we are going to come to questions of—I guess it is like Gompers used to say, we reward our friends and punish our enemies.

Mrs. CHISHOLM. Precisely.

Senator SIMPSON. So there we are, and when we open the definition itself, then we increasingly will push ourselves toward those political considerations which we would hope we could have avoided.

Mrs. CHISHOLM. Mr. Chairman, I would just like to say I know that the entire issue of refugees and immigration policy has to be looked at very carefully, and perhaps the time has come in our country to reassess and reevaluate because of the thousands of persons that are coming here for one reason or another.

But all I ask of the committee, whatever it is that we do, that to the best of our abilities, that we insure that there is an equitability of treatment and the same kind of application of whatever our standard is to everybody who is coming here, and not being selective.

I don't have the time today to go into detail as to how we have been selective in terms of human rights as we perceive them in some countries, in granting them certain things that we didn't grant to other countries, because perhaps it might have served our purposes at that point in time. All I am asking is equitability.

Senator SIMPSON. Well, I would assure the Congresswoman that if there is one thing we hope to do in our grappling here, that we hope to do it differently than our immigration policies in the past, which have always contained elements of racism. The Germans, the Chinese, the Irish, you can start on down through the list, have all felt the brunt of these policies, and hopefully for the first time we can put one on the books that recognizes that there will not be that consideration in our immigration and refugee policy reform. I can pledge you that.

Mrs. CHISHOLM. Well, Mr. Chairman, I am so glad to hear you say that. Of course, our country is multifaceted, variegated Nation of all kinds of people coming from all over, and the Irish at one time met difficulty, the Germans met difficulties, the Italians, each wave of immigrants that came to these shores have met difficulties depending on the region of the country in which they settled. But there is one thing I guess that really separates out groups like the

Haitians from any of these other groups; their high visibility, skin pigmentation.

Senator SIMPSON. Yes, I agree, and the Hispanics with that same fear.

Let me just ask, in two questions, I want to ask your views on something that is reported to us continually. I really need your thoughts for the record.

Can you describe to us according to your own views, and having worked on the problem for 10 years, the real frictions that develop and we know have arisen between Spanish-speaking Cuban refugees, Spanish-speaking migrants, and the Haitians and native blacks? How best do we deal with that? What does the Black Caucus feel, and you as their spokesperson, about the perception that the Cuban-Haitian situation in south Florida has aggravated U.S. blacks who feel that these entrants are being accorded cash benefits and housing and job opportunities which they themselves are not receiving?

And I receive correspondence that comes to the subcommittee, from those people and I would like your views.

Mrs. CHISHOLM. Well, let me say this. Of course, in any kind of situation when you have massive numbers of persons who can be termed refugee or entrants or whatever the case may be, coming into a situation where you already have thousands of other black persons, thousands of other Hispanic persons who are at the very bottom rung of the economic ladder, there is always this fear that these persons now coming into the country in some way, will take away the relatively few opportunities that might be available to them. Also, are you really going to be allegedly impinging on some of the benefits and rights that some of them have never been able to get?

Two quick thoughts. Particularly during periods of economic stress and strain, particularly during the time where the unemployment is so terribly high and people are trying to find a way just to meet the day-to-day living standards, you find the hostility and the scapegoating rise to such a peak that people observing and not understanding sometimes why it has come to this peak, might actually feel that the Haitians hate the Cubans, and the Cubans hate the Haitians, and the American blacks hate everybody that is coming in. It has to be talked about in the context of the particular economic situation and what has been happening, in given regions of the country.

I have also talked with a number of those persons, and it is very interesting to me, just by talking to them in the streets and what have you, they will say very quickly, Mrs. Chisholm, you know, the only thing we worry about, we want people to have the chance, and we want people to be treated fairly, we don't want anybody to take anything away from us. The caucus also knows that the thing that bothers us as onlookers and observers is that the people of color are always allegedly and assumedly creating so many more kinds of economic problems when they come to these shores.

I also found out, Mr. Chairman, because I was very interested in this when it was indicated that some of the blacks and some of the Hispanics, native blacks, and native Hispanics in Florida were very upset about people taking jobs away from them, I found out, lo and

behold, that many of the jobs that these persons were really talking about were jobs that the average Hispanic or the average black in this country would not accept or would not work at, many types of menial jobs which were not even paying the minimum wage that many blacks and Hispanics feel is really beneath their dignity.

So another thing we have to realize is that the minimum wage law, although it is a law on the books, is not always being implemented and carried out. And so I think too often that argument is used as an excuse for not really getting to some of the other issues.

The Haitians and the Cubans are not taking away those jobs that people are talking about because many of them are doing jobs that people here will not do and will not accept. That is why this whole business of exploitation enters into the picture.

Senator SIMPSON. Well, you can see what we have before us.

Mrs. CHISHOLM. Oh, yes.

Senator SIMPSON. I have just one more quick question because I know your schedule is heavy, too, which concerns the issue of trying to accelerate the asylum adjudication process.

I would hope in no way to leave the impression that in trying to accelerate that process of hearings on asylees that justice should be circumvented. We have had testimony this morning from former Attorney General Civiletti and many others that we must do something with that process because it is comprised of three separate levels of "de novo" proceedings, plus an appeal, plus when that fails, then ask for a stay of deportation. We think that we must get to a position where we have one step for civil action and then one step for appeal and that is it.

Would you agree with that?

Mrs. CHISHOLM. Yes, I would agree as long as the process is fair and equitable.

Senator SIMPSON. Well, that is a start. We will get going with that.

And I thank you very much.

Mrs. CHISHOLM. Thank you for the opportunity.

Senator SIMPSON. All right, Congresswoman. Thank you very much.

There will be some other questions, and I know Senator Kennedy and other members have some to address, and I will send those to you and you can respond at your convenience.

Mrs. CHISHOLM. Please do. I want to.

Senator SIMPSON. Thank you very much.

Rather than take a break at this time. let's just go ahead. I have a leather cushion underneath me and I am ready to go. Let's begin with the panel of public interest groups.

Now, may I have your attention, please. We are not in recess.

The panel members are Ronald Gibbs, National Association of Counties; Dale F. Swartz, National Forum on Immigration and Refugee Policy; Wells Klein, U.S. Committee for Refugees; and John D. Tenhula, Church World Service, the National Council of Churches, the American Council of Voluntary Agencies.

I believe you have been advised of the time limitation, and I appreciate your adherence to that. I know it is tough to meet that, but it is important that we do so. And you will notice that I could

not do that with my colleagues in the House and the Senate, so I must inflict it upon you. And so we will use the timer light.

And if you would proceed, we will begin with Mr. Gibbs.

It is nice to have you here, and thank you for your patience.

STATEMENT OF RONALD GIBBS, ASSOCIATE DIRECTOR, NATIONAL ASSOCIATION OF COUNTIES

Mr. GIBBS. Thank you, Mr. Chairman.

I am Ronald Gibbs, associate director for the National Association of Counties. We welcome the opportunity to testify before you on the issue of the United States as a country of first asylum. This is an issue of great concern to counties, particularly those in Florida which last year experienced an influx of more than 150,000 Cubans and Haitians seeking asylum in this country.

I must point out to you today that the views I am presenting to you are not my own but the views of elected county officials from across the United States.

Although the Federal Government is responsible for determining national immigration and refugee policies, it is county government which must deal on a daily basis with the effects of these policies. While this debate continues in Washington, local governments must continue to cope with and rationalize our immigration policy which up to now has been a nonpolicy.

Therefore, we are pleased that the administration has proposed an immigration policy to begin this important debate, and that your committee will continue to hold hearings in the coming months.

Given the political and economic climate in many Cuban and Latin American countries, the issue of the United States as a country of first asylum is likely to continue, as evidenced by the arrival of an additional 462 Haitians in south Florida last week. However, the impact of these arrivals is staggering. To point out just some statistics to you, Mr. Chairman, in Dade County, from January 1 to July 15, 1981, Jackson Memorial Hospital, the county hospital, has incurred over $6 million in costs for in-patient care for Cubans and Haitians. The housing shortage is critical in Dade County with a one-half of 1 percent vacancy rate, and there is a waiting list of 25,000 people for public housing.

Judge Hastings has cited Dade County in contempt due to overcrowded jail conditions, and they will be fined $1,000 a day until the conditions are corrected. The school system in Dade County has absorbed 16,000 entrant children this year and will be provided minimal funds to address these costs.

So you can see there is an immediate financial impact that one county in southern Florida is having to incur.

There are several policy positions that I would like to present to you that the elected officials of our association have arrived at.

CONTINGENCY PLANS

First, the widespread confusion and lack of coordination in the handling of the recent Cuban-Haitian influx points to the need for the Federal Government to develop contingency plans for handling future mass asylum situations. Such plans should identify the lead

agency responsible for directing the Federal Government's efforts in this area, as well as identifying the programs responsible in other relevant agencies.

ENFORCEMENT

Second, stronger measures are needed to prevent a recurrence of the Mariel boatlift in 1980 in which American vessels brought thousands of Cubans illegally into south Florida. In the case of that boatlift, existing statutes proved to be inadequate. Therefore, we would support the enactment of legislation to more effectively deter persons from bringing aliens into this country illegally. We believe that the United States should proceed cautiously before implementing a policy of interdiction of illegal migration on the high seas. Although strong enforcement on our borders is desirable, we recognize that interdiction would be operationally difficult and hazardous to the safety of persons involved.

DETENTION CENTERS

Third, we favor a policy of temporarily detaining mass asylum applicants in Federal facilities pending a determination of their immigration status. With the exception of initial processing centers, the detention facilities should be located outside of areas such as Florida which are directly affected by mass asylum. State and local elected officials should be consulted in the selection of sites for these detention facilities.

Currently it takes several years for the processing out of a detention facility, and should that time frame continue, those applicants who do not represent a danger to the public should be resettled into communities. We believe that it is inhumane to keep people for months and even years in detention facilities without just cause.

PLACEMENT STRATEGIES

Fourth, the Federal Government should develop placement strategies for resettling mass asylees which takes into account the capacity of communities to successfully absorb them. That is, consideration should be given to the availability of housing, employment, and other resources which they will need. And we are aware, of course, of the problems of secondary migration, but this would be linked to a reexamination of our resettlement strategies in this country.

And we also believe that the Federal Government should fully reimburse State and localities for the cost of assisting asylee applicants.

FEDERAL ASSISTANCE TO ASYLEES

Fifth, we favor extending to asylum applicants the same Federal assistance that is provided to refugees and asylees under the Refugee Act of 1980, and to Cuban and Haitian entrants under the Stone-Fascell amendment. Under present law, applicants for asylum are currently not eligible for Federal assistance such as

AFDC, medicaid, SSI and food stamps. As a result, counties again must bear the burden of assisting needy asylum applicants.

CUBAN-HAITIAN STATUS

Lastly, we favor permitting Cubans and Haitians currently residing in this country as of July 1, 1981, to remain in the United States and to apply for permanent resident alien status after they have been in the country for at least 3 years. However, efforts should be made to repatriate criminals, the mentally ill and other Cubans and Haitians who are subject to exclusion on other grounds. Consistent with our position on Federal financial responsibility for refugee costs, we believe again that the Federal Government should reimburse States and localities for the costs of cash medical assistance and so forth. We do not believe that that has been adequately addressed in the administration's latest proposal.

In closing, I would like to thank you for this opportunity to testify before you and present the views of elected officials at the local level from around the country. We believe that this hearing is an important first step for developing national policies and plans for more effective resettlement of mass asylees. Congress and the administration must remember that it is a national responsibility, but that the local governments' concerns must be taken into account in the development of a comprehensive policy.

Thank you, Mr. Chairman.

Senator SIMPSON. Thank you. That was very precise and helpful.

And now Mr. Swartz, please.

STATEMENT OF DALE F. SWARTZ, NATIONAL FORUM ON IMMIGRATION AND REFUGEE POLICY

Mr. SWARTZ. Thank you. I appreciate the opportunity to present testimony today. I have submitted a lately prepared written statement. I intend, if the committee would authorize, to supplement that statement before the close of the record.

Senator SIMPSON. The full statement will be accepted without objection.

Thank you.

Mr. SWARTZ. I appreciate that.

A minute first on my background and the perspective from which I approach these problems. I have had a somewhat unique experience with regard to the first asylum phenomenon in the last several years. I have been an attorney representing the refugees from Haiti in the major litigation in Miami, the case of *Haitian Refugees Center* v. *Civiletti*. In that case Judge James Lawrence King, who I would emphasize was appointed by President Nixon in 1970, issued a 180-page opinion vigorously condemning the practices of the Immigration and Naturalization Service with regard to their processing of over 5,000 Haitian asylum applicants. He also issued approximately 70 pages of findings of fact regarding political and economic conditions in Haiti, addressing very specifically and in great detail the questions of why people are fleeing that country, and the likelihood of persecution upon return.

In addition, particularly in 1980, I worked very closely with NACO, the south Florida congressional delegation and others on a

range of resettlement, reimbursement of State and local government and legislative matters attempting to address the problems which beset that area of the country as a result of the Haitian and Cuban exodus. I drafted a portion of the Fascell-Stone legislation and worked very hard to get it enacted.

I have also had substantial consultation with the new administration in the last several months, including participating in briefings for Frank Hodsoll and other White House officials on these and other immigration issues. I recently accompanied David Hiller on a factfinding trip to Miami prior to one of the final cabinet meetings.

I have thus had a range of experiences with the mass asylum issue. What I hope to do today is outline some concerns that I have about how the issues are being approached, and some dangers in public policymaking that I fear are going to lead us once again, as over the past number of years, down the road to failure. I would also like to very briefly describe my sense of the likely consequences of the Reagan administration's policy proposals, and if time allows, and if not, in questioning, suggest some alternatives.

I think first and foremost that the first asylum situation refugees or people claiming to be refugees coming directly to our shores. presents perhaps the harshest choices, the rawest edge, of the immigration dilemma. The tension in Miami, the backlash as a result of these phenomena in the last year, is real, as I am sure you are well aware. In my judgment the backlash against refugees is dangerously inhibiting our ability to make rational judgments and to approach policy issues from a long range as well as short-term perspective. I am afraid that the backlash is going to get in the way of solving these problems and securing control over immigration. And I want to emphasize that control, from my perspective as an attorney who has represented Haitians, is in everyone's interest. It is in the interest of the refugees, it is in the interest of south Florida, it is in the interest of the Nation, and it is in the interest of stability in the Caribbean basin and elsewhere.

I think of fundamental importance in this area is congressional oversight. I hope and trust, as these hearings today indicate, that this committee does indeed intend to engage in a rigorous examination of executive branch actions with regard to mass asylum, of State Department representations regarding of the facts upon which they argue policy should be based, and quite frankly, examination of the real political pressure with which the executive branch in particular is confronted.

In that regard, first asylum presents a convergence of domestic and international policy, and politics. The domestic political pressures in Miami are extreme. At the same time, the international politics regarding mass asylum are extremely difficult—involving our relationship with an ally in Haiti, our relationship or lack thereof with Cuba, and the fears and concerns of other Caribbean basin nations that the consequences of our policies may well be to simply divert Haitians away from Florida or to the Bahamas or to other Caribbean islands with weak economies and uncertain political stability.

The executive branch is caught in this convergence of difficult domestic and international political pressures leading often to

White House resolution of the policy questions presented. This was true in 1980. The White House made the basic decisions, even on details on Haitians and Cubans resettlement issues, benefit issues, fiscal issues; all fundamental decisions ultimately last year were made in the White House. I think that is creating a problem in the decisionmaking process within the executive branch.

In addition, the range of institutions, public and private, domestic and international, that are involved make institutional coordination and the ultimate implementation of whatever policy choices are made extremely difficult. The institutional roles, institutional coordination and how the politics of the first asylum problem affect these matters are also reasons why rigorous congressional oversight is very important.

I mentioned the backlash and my concern about how the backlash may be creating dangers for rational policymaking. I would like to give just one example that is outside the first asylum problem, but is relevant to why I think the problems in Miami, and how the tension and the fear is spreading across the country, should give the committee great pause.

I believe that 2 weeks ago the Judiciary Committees were approached and indeed authorized the admission of 2,400 Poles as refugees. I am concerned that if there is an invasion of Poland 6 months from now or 10 months from now, and suddenly there are 750,000 Poles in Western Europe with grave national security and military crises perhaps presented, the U.S. Government, wanting to be in a position to admit hundreds of thousands, simply will not be able to because of the backlash and public opinion. And I think that that is something we should be cautious of as we look at the problems of governing in this area.

The rule of law is implicated fundamentally in the first asylum question. I am very concerned that a number of the proposals of the administration represent a substantial departure from the fundamental tradition and commitment of this Nation to the rule of law, regardless of color or national origin.

I know my time is about up. Let me finish by saying—and I would be happy to answer specific questions—that in my judgment, the proposals made by the administration will fail. They will not solve the problem. I believe they are going to create greater problems. The root of the problem is in Haiti, it is in El Salvador, it is in Cuba. The committees and the Congress and the public at large have to understand that domestic approaches alone are not going to get control over this very, very difficult human phenomenon.

Thank you.

Senator SIMPSON. We will come back to that issue in the question process, and we will have adequate time to develop it. I am very intrigued by what you are saying and hear it clearly.

[The prepared statement of Mr. Swartz follows;]

PREPARED STATEMENT OF DALE F. SWARTZ

My name is Rick Swartz. I wish to thank the committee for an opportunity to testify on perhaps the most difficult immigration issue the country faces—the flight of refugees and persons claiming asylum directly to our shores.

I am an attorney for the Lawyers' Committee for Civil Rights Under Law. Over the last three years I have been extensively involved in litigation and policy matters regarding Haitians, Cubans, El Salvadoreans and Nicaraguans. I was co-counsel in *Haitian Refugee Center* v. *Civiletti*, 503 F. Supp. 442 (S.D. Fla. 1980). In that case Judge James Lawrence King, appointed to the federal bench by President Nixon in

1970, presided over a six week trial and then issued a 180 page opinion in which he made extensive findings of fact which directly contradict INS claims of fairness and State Department assertions that Haitians are to subject to persecution upon return and therefore are not refugees. Last year I was also extensively involved in negotiations with the White House, members of Congress, state and local officials in Florida and The Cuban-Haitian Task Force regarding both the Haitian and Mariel issues.

I testified on these subjects before this committee last May 12, and have appeared several times before several different committees and subcommittees in the House. I also worked closely with Congressman Fascell and Senator Stone in drafting and working in support of the Fascell-Stone legislation which brought a bit of order to chaos and over $190 million to impacted communities. I have also been extensively involved in resettlement policies and plans to detain Haitians in Puerto Rico and other locations outside Florida. I continue to work closely with congressional offices, state and local government officials and non-governmental organizations regarding these issues.

More recently I have had the opportunity to consult extensively on these and other immigration matters with White House staff and Justice Department officials. At the request of the White House I participated this spring in a day-long briefing with Frank Hodsoll and others. At the request of the Attorney General's office I arranged several meetings with a range of non-governmental organizations on first asylum and other immigration issues. At his request, I also recently accompanied David Hiller on a fact-finding trip to Miami.

I am prepared to submit for the record today a general statement regarding the character and implications of the first asylum issue, and to discuss orally my opinion regarding the likely consequences of the Administration's proposed policy for first asylum.

I wish to reserve an opportunity to submit before the close of the record an extensive analysis of the first asylum issue which I am preparing with the assistance of a range of organizations under the auspices of the National Forum on Immigration and Refugee Policy. The National Forum is a new organization through which approximately 150 diverse national and international organizations and communities are participating in an effort to learn from one another and critically examine immigration, refugee and related foreign policy questions. The groups participating in the Forum include representatives of state and local government, congressional offices, churches, population and environmental groups, Hispanic, Black, and ethnic groups, labor, business, law, academia and others. Organizations involved include the National Association of Counties, Zero Population Growth, the American Jewish Committee, MALDEFF, the International Ladies' Garment Workers Union and refugee and immigrant communities. Many of these organizations play a central role in the implementation of policy, and seek through the Forum to work together to help develop policies which they are asked to implement and with which they must live.

The testimony I present today is my own, and is not given on behalf of either the Lawyers' Committee or Forum members. However, the Forum has formed task forces which have completed substantial analyses of several of the major issues immigration presents, and task force work on the question of first asylum is nearing completion. This work product will be available before the close of the record. It will address in detail the range of factual, legal, fiscal, domestic and international issues first asylum presents.

FIRST ASYLUM AND IMMIGRATION POLICY: THOUGHTS ON A FRAMEWORK FOR MAKING HARD CHOICES AND THE CRITICAL NEED FOR RIGOROUS CONGRESSIONAL OVERSIGHT

The first asylum issue, more sharply than any other, forces policy makers to confront the raw edge of the immigration dilemma. The choices are harsh. The refugee impact on Florida in the last year has been immense. The human costs have been overwhelming. Allied and enemy relationships are involved. Significant national security issues are implicated. And in this area, as in many other immigration areas, the Executive Branch has failed to develop, much less implement, a coherent, lawful, workable or effective policy.

In the last several years, the Executive Branch, particularly the departments of Justice and State, have disserved the national interest regarding first asylum. In my opinion not only bad judgment but, most disturbingly, deceit, have led to the failures of policies and the intensifying public anger which now pervades Miami. Rigorous Congressional oversight and investigative fact-finding are critical if the national interest is to be served.

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I therefore applaud and welcome this Committee's commitment to rigorously examine the questions of fact, law, domestic and foreign policy which the first asylum question presents. Because the Administration's proposals were not fully known until yesterday, and because this is but the first of a number of hearing to be held on this subject, I offer to the committee from my perhaps unique perspective on analysis of the political and political reasons for the past failures, and of the international implications of how we approach this problem. I also caution that certain patterns of public rhetoric and institutional practice regarding first asylum undermine our nation's ability to devise and implement practical and wise decisions.

I. The political setting

First asylum presents major domestic and foreign policy issues. The political interests are powerful and the stakes are high both domestically and internationally. The politics of constituents and the politics of nation-states converge. Immense problems of implementation are presented, including coordination among a wide range of often conflicting public and private, federal and local, and domestic and international agencies. This enormous pressure on the executive branch has focused resolution of issues in the White House. The decision-makers thus have been even more distant from the facts, and more beset by conflicting political considerations. These patterns underscore tenfold the critical importance of rigorous congressional oversight.

The failures of past policies crystallized by the Mariel exodus and couples with growing economic uncertainty and ethnic and racial tension, public frustrations have created an ugly mood especially in Miami. Many innocent people, including the most disadvantaged of American citizens and many of the refugees themselves, have suffered greatly. And, dangerously, the backlash and resentment against others has come to dominate the political atmosphere. Politicians, interest groups and others feel more pressure either to echo such sentiments or condemn them, thereby increasing the tension, the rhetoric and the accusations on all sides. Objective fact-finding and practical problem solving are lost to passion and fear, real and instilled. Statesmanship and true governance are not to be found.

In my judgement, the foregoing does not overstate the reality of Miami which the committee now confronts. Again, the first asylum issue, which is presented in its most stark form in Miami, presents I think the hardest choices and most visible tension of all immigration issues.

II. The politics of backlash endanger the national security

I stress this theme to make the following point: It is in the domestic and international security interest of the United States for policy-makers and the public at large to commit themselves to "civilize the debate", to minimize the rhetoric and to calm and not play to the backlash. The real and potential costs to the community of such public tension are staggering. The human costs are incalculable. Rational problem solving is virtually impossible. And the potential international implications, both in this hemisphere and elsewhere, could be devastating should leadership not make every effort to alternate the tension and anger. Yet, I fear more and more elected officials and others seem bent on playing to, not calming, public tensions.

In this regard, Miami today is infected by concentrated and intense official and public determination to scorn people seeking refuge. On its own initiative and in response to public anger and the pressure and rhetoric of Florida officials, the Administration intends to interdict Haitian boats on the high seas, turn them back, and imprison and rapidly deport those who reach our shores. The ethical, human and practical implications of these measures will dangerously disserve the self-interest (rightly understood, as Alexis de Torqueville proclaims in "Democracy in America") of both South Florida and the nation.

First, the last time the United States turned away boats of people seeking refuge was in 1939. Neither the government nor the public chose to believe that the Jews scorned would be persecuted if not granted sanctuary. Those then denied entry met unknown fates. Though it pales by comparison, the Haitians exodus and the U.S. response raise somewhat similar questions of fact, principle and policy.

Second, in 1978 the United States condemmed Southeast Asian nations which turned back Indochinese boat people. Our rhetoric was humanitarian and our purposes strategic. But, now, Reagan's harsh new Haitian policies may jeopardize U.S. national security in the Caribbean and set a precedent elsewhere in the world.

Should the Administration's new policies actually curb the fight of Haitians to Florida (and I would argue strenuously that they will not), the devasting repression and poverty of that country will continue to drive its desperate people out. If not to Miami, then to economically weak and politically uncertain Caribbean island states

and in increasing numbers to Central and South America. The potential for greater instability in the Caribbean Basin is real—already 10 percent of the Bahamas is Haitian and an estimated 400,000 Haitians are in exile throughout the Caribbean.

If the anger of Miami spreads or develops, as appears to be happening, throughout the nation, the implications could be even more tragic. I offer one more, not unthinkable scenario: If Poland is invaded and suddenly 750,000 Poles flee to an already tense Western Europe (there are an estimated 1.5 million Afghanis in Pakistan), the United States may confront a national security and even military crisis which requires that we resettle hundreds of thousands of Poles. A public angry about immigrants and refugees, and those who represent them, may not be willing to accept it. The consequences, again, may be grave.

In short, I am concerned that the growing "politics" of backlash which infects South Florida is spreading through our land, and in both predictable and unforeseeable ways threatens our domestic and national security. The first asylum issue thus warns us that it is in the national interest for American leaders to make every effort to curb not only illegal immigration, but anti-alien, anti-refugee anger. The sober flexibility that a calmed public would allow need not be exercised unless, as in the case of an invasion of Poland or a program in Russia, the national interest demands a response.

III. Congress must demand accurate facts

In more concrete terms, the first asylum issue also presents in raw form the critical importance of getting to the truth about the facts, domestic and international, upon which policy is based.

Here again, rigorous congressional oversight is critical because the Executive Branch, particularly the State Department, is not providing Congress or the public accurate information about fundamental facts. Whether this is because of ignorance, incompetence or geopolitical considerations which lead to the withholding or misinterpretation of information (compare the current dispute regarding Indochinese refugees), the result is disaster for the American people. Policies predicated upon false information are doomed for failure. The American people deserve more. Practical, wise and workable policies must be based upon complete and honest accounts of the facts.

Here, too, the first asylum issue sharply presents a problem in decision-making which pervades the immigration area. The central issue in the Haitian question is why are people fleeing Haiti, and do Haitians have a well founded fear of persecution if returned to their homeland. The State Department witnesses in Thursday's congressional hearings dangerously misled the Congress by asserting that there is no evidence "that any Haitian has been persecuted upon return." This is an extraordinary statement which flies in the face of human rights reports issued by the Organization of American States, Amnesty International, the International Commission of Jurists and the State Department itself.

Most strikingly, the State Department's assertion directly contradicted seventy pages of findings of fact regarding treatment of Haitians upon return set forth in a federal court opinion issued last July following a six week trial before Judge James Lawrence King of the southern district of Florida. The case was brought and overwhelmingly won by a class of 5,000 Haitians whose claims for asylum were arbitrarily denied by State and INS. The State Department was a defendant in that litigation, and certainly should be aware that Judge King found pervasive evidence that the Haitian government has indeed adopted a policy of persecuting persons returned to Haiti from the United States.

Judge King was appointed to the federal bench by President Nixon in 1970. The evidence he heard and the opinion he issued in *Haitian Refugee Center* v. *Civiletti*, 503 F. SUPP. 442 (SDFLA 1980) reflects the most rigorous and comprehensive examination and analysis of the fundamental factual issues which underlie the Haitian refugee phenomena.

Federal district courts are the institutions that this society has established to conduct the most rigorous analysis of issues of fact. The rules of evidence apply. Witnesses testify under oath. They are subject to cross examination and rebuttal testimony. It is thus alarming that the State Department can claim ignorance of seventy pages of findings of fact by a federal judge which are directly contrary to the Department's asserted position.

We strongly urge that the Committee, in exercise of its oversight responsibilities, carefully review Judge King's and others findings of fact found to be true regarding political and economic conditions in Haiti, why people flee and the likelihood of persecution upon return. If the truth is that many Haitians flee not only for economic but also political reasons, and that many are subject to persecution upon return, the policies proposed by the Administration are doomed to fail, and other

approaches to curb Haitian migration are likely to be more realistic, practical and humane. For the Committee's consideration excerpts from Judge King's opinion are attached hereto. Consider the power and the implications for U.S. policy and human beings of but one of his hundreds of findings:

"In reaching its conclusions the court has listened to a wealth of . . . testimony. Much of the evidence is both shocking and brutal, populated by the ghosts of individual Haitians—including those who have been returned from the United States—who have been beaten, tortured and left to die in Haitian prisons.

". . . The uniform rejection of the claims of the present 5,000 member class can not be reviewed, regardless of how lenient the standard of review, without inquiring into the conditions in Haiti. The evidence on that topic has been stark, brutal and bloody.

"The central question can be rather specifically drawn: How would these plaintiffs be treated if returned to Haiti? . . . the treatment of returnees in Haiti is part of a systematic and pervasive oppression of political opposition, which uses prisons as its torture chambers and Ton Ton Macoutes as its enforcers."

Perhaps no more need be said regarding the importance of rigorous congressional and public scrutiny of the "facts" upon which immigration refugee policy is based. The plight of the Haitians starkly presents this need. This need also exists with regard to other factual questions involving, for example, the situation in El Salvador and the extent to which U.S. military, economic and other foreign policies are contributing to the flight of Salvadoreans. The connection between migration and foreign policy also bears close scrutiny with regard to Guatemala and Cuba. Congress is not likely to achieve control if it bases its decisions on State Department conclusions that these are economic not political, migrations. Employer sanctions will not deter persons who think they are fleeing for their lives. Nor, in my judgment, will interdiction, detention or expedited asylum proceedings. The Haitians and other refugees in this hemisphere have long demonstrated that they will take great risks to escape repression.

IV. The rule of law

Immigration issues generally, but again first asylum issues most sharply, present yet another fundamental question. Respect for the rule of law—the central pillar of the republic—is dangerously undermined by both illegal immigration and government lawlessness. The pressure for control, and the frustrations and backlash produced by past failures, push the government to more extreme measures such as those the administration has proposed for Haitians. The law is flouted, the injuries severe, lawsuits ensue and courts, thankfully, have thus far upheld the law against government lawlessness. But policy is not implemented, the problems persist, pressures increase, and the cycle spirals on. The American public are the ultimate losers.

A number of the measures proposed by the administration regarding first asylum will lead to policies and practices shadowed by lawlessness. Interdiction is the prime example. The administration Thursday submitted written testimony which stated that they would seek legislation to authorize the President to direct interdiction, but then later in the afternoon stated that interdiction would begin immediately. Congressional oversight is necessary to remind an executive branch beset by political pressure that government lawlessness, even more severely than illegal border crossings, undermines the fabric of respect for the law which maintains our social order. In this regard, careful consideration of Judge King's findings of fact regarding INS due process violations, and this administration's recent practices, now under challenge in the federal courts, of conducting Haitian exclusion proceedings behind locked courtroom doors from which even attorneys were barred, require Congressional scrutiny. And respect for the law also requires that Congress carefully consider proposed measures which may violate international treaties or legislatively authorized practices which may well result in substantial numbers of persons return to their homelands where they will indeed be persecuted.

V. International solutions

Finally, the first asylum issue reminds us that practical solutions often lies primarily in the sending country, even in the short term. The hard choices confronted include harsh measures even against allies such as Haiti, who are flaunting U.S. sovereignty by political and economic repression and even direct involvement in the smuggling trade, which in my judgment, the United States has been humiliated just as much by "Baby Doc" Duvalier as by Castro. The country deserves rigorous Congressional examination of how our foreign policy toward certain countries fuels migration, and threatens thereby our domestic tranquility.

When talk turns to hard choices about emancipation we must not look only at those seeking our shores, but also at the societies and governments they have abandoned, and the policies and competence of our own officials. Foreign policy approaches are essential if our objective is control. To be blind to this reality is to accept failure before we even begin to talk seriously about immigration reform.

In their own self interest, the people of America must demand true statemanship of their elected officials. The current politics and vicious tenor of the immigration debate portends disaster for America and the world community.

CONCLUSION

The foregoing thoughts are suggested as an appropriate and necessary perspective from which to precisely examine the character and likely consequences of the administration's proposed policies regarding first asylum. Although I disagree with many of the details to the extent that they are now known, I think that the administration has rightly decided to propose reform of certain immigration procedures and the development of legislation which will provide clear legal and budget authority in the event of a mass asylum crisis. Their proposals regarding interdiction and, detention and their general perspective that the Haitian and El Salvadorean situations are illegal migration, not refugee phenomena, are, however, fundamentally flawed and likely to create more problems than they resolve. I will orally outline my reasons for this conclusion during this afternoon's hearing, and discuss these questions in detail in the submission I will ask be later inserted in the record.

This subsequent submission will also outline in detail and give reasons for proposed alternative approaches to the first asylum problem. These alternatives will emphasize two primary themes—that a realistic reassessment of the facts indicates that people fleeing Haiti and now El Salvador are as much if not more true political refugees than Indochinese, Eastern Europeans and others we regularly accord refugee status. This argues clearly for serious consideration of adopting on the shores of the United States, and in the Caribbean Basin generally, an international response, perhaps under the auspices of the United Nations or OAS, modelled on the policies we have encouraged and financed in Indochina and other parts of the world. If the phenomena has refugee characteristics, our policy should honestly reflect that. The second major theme is that real solutions, both in the short term and long term, are not likely to be found in measures taken on U.S. shores, but rather through foreign policy initiatives and pressure directed as the sending countries such as Haiti and El Salvador. I will later present detailed recommendations regarding both political and economic policies which address root causes and are, in my judgment, in the national interest of the United States. Haitians will continue to flee Haiti unless they are given reason to invest their hopes, and their futures, in their own country. Until the character of that regime changes, their hopes will focus on Miami, and no measures we undertake domestically will deter the risks they have long demonstrated they are prepared to take.

Senator SIMPSON. Mr. Klein, please.

STATEMENT OF WELLS KLEIN, EXECUTIVE DIRECTOR, U.S. COMMITTEE FOR REFUGEES

Mr. KLEIN. I, too, appreciate the opportunity to testify here today, Mr. Chairman. I will read part and summarize part and try to stay within the 5 minutes.

Our appearance before the subcommittee stems from a very specific concern of the U.S. Committee for Refugees, namely, that the manner in which the United States responds to the difficult public policy issue of mass asylum will directly and immediately affect our Nation's leadership role with respect to fundamental issues of refugee asylum at the international level. The policy we adopt will confirm or compromise our historical leadership and moral authority in the field of human rights and more specifically refugee acceptance and assistance. The world is in fact closely watching how we handle this issue, and I believe many other countries will modify their policies on the basis of what the United States does as a result of these deliberations.

I think it is clear that the experiences of the recent past demand that our Government articulate a clear policy with regard to mass asylum situations, both so that we will be prepared to respond in adequate fashion to any future episode, and so that those who would consider coming will know the results of their actions. The result of our policy must be predictable so that those who don't fit won't come, and should there again occur a mass expulsion to our shores, we must be prepared to react with humanity but with full recognition of our need to be in control of our own immigration policy. This translates into an immediate request for international cooperation and assistance, and international sanctions against the expelling country.

Failure to clearly articulate a mass asylum policy will inevitably undermine what has always been our country's commitment to a liberal, flexible, and humane policy with particular respect to those legitimately seeking asylum and for those refugees fleeing persecution.

We believe the only way to come to grips with this complex issue is by reference to three fundamental principles that must guide U.S. policy.

One, the United States must have control and must appear to have control of the flow of people permanently entering this society. We have neither at present. This failure prejudices the constructive expression of the inherent reservoir of good will within the American public to respond positively to genuine refugee emergencies. While we might ideally wish to see the free movement of people across all national boundaries, we do not yet live in the best of all possible worlds.

Two, our mass asylum policy, the result of these deliberations, must be consistent with what we ask of other nations in similar circumstances. Such consistency is fundamental to our continuing role of leadership in the free world.

And three, we must fully observe the fundamental tenets of due process in the way in which we deal with the varying circumstances of asylum seekers.

Senator KENNEDY. Would you just yield for a brief question?

Senator SIMPSON. Certainly; go right ahead.

Senator KENNEDY. On point two, when you are talking about consistency, does that relate to the U.S. request to some of the Southeast Asian countries with regards to the boat people a couple of years ago?

Mr. KLEIN. Absolutely, Senator.

Senator KENNEDY. Could you make a brief comment on that?

Mr. KLEIN. Yes.

Senator KENNEDY. At that time there was interdiction on the high seas, and it was the United States that got these countries to stop interdiction because of the loss of life, I think.

Mr. KLEIN. Let's take Malaysia.

Senator KENNEDY. Maybe you would just reconcile what was done then, since I think I know that you are very familiar with that area.

Mr. KLEIN. Let's take Malaysia. Malaysia has a divided society, partially Chinese, partially Malay. They have always had commu-

nal frictions. There have been conflicts in the past leading to violence. They have internal political problems, racial problems.

The Indochinese refugees arriving on the coast of Malaysia were in 1979 heavily ethnic Chinese arriving on the eastern seaboard of Malaysia, which is predominently conservative Muslim. They had every reason—we didn't talk about it much then—to be concerned about the impact of ethnic Chinese arriving in a conservative Malay population.

We urged strongly that they not push boats off to sea. We urged strongly that they not interdict and move them on down. We urged strongly that they provide first asylum and internationalize the problem.

We sent the 7th Fleet out. We went through all sorts of persuasive leadership moves and were successful.

If we do not ask of ourselves the same thing that we ask of the Malays or many others, there is never again a chance that another nation will listen to us in those circumstances. That is what this refers to.

Senator KENNEDY. If the Senator could yield just a moment.

Senator SIMPSON. Mr. Klein, we are giving each of you 5 minutes, and I won't let that run against your time. I will add that to his.

But go ahead, Ted.

Senator KENNEDY. Well, maybe I could use—without holding onto them, because we are considering the Rex Lee nomination for the Solicitor General, I am involved in that debate on the floor——

Senator SIMPSON. Go ahead.

Senator KENNEDY. But I just wanted to take the time, Mr. Chairman, first of all to commend you for listening to the voluntary agencies and the State and local agencies. This set of hearings has been, I think, enormously important for the Senate and for the American people in the diversity of the information that we have received. And as someone who has worked very closely with the voluntary agencies over a period of years as chairman of the Subcommittee on Refugees, going back to 1964, that we have had better, more accurate, or more humane testimony over the years than from the voluntary agencies and church groups.

And I want to first of all express my appreciation to the chairman for including the voluntary agencies in this set of hearings, and to also hope that as we listen to a lot of different voices on this issue, that the Senate, in its good judgment will listen to the kind of calm, thoughtful, experienced, knowledgeable voices that we are hearing this afternoon from representatives of the voluntary and State agencies. These are individuals with the highest degree of commitment, knowledge, and understanding, and they are acting certainly within our national interest. I just wanted to express my appreciation for their presence and to welcome them here. I had a chance to read some of their testimony last night, and I want to again commend the chairman for being willing to have them.

I hope you will excuse me for not being able to stay.

Senator SIMPSON. If you want to address any other questions at this time, feel free.

Senator KENNEDY. I may submit some questions later on.

Senator SIMPSON. Asking them now would keep you off the floor, and we could get the fellow confirmed.

Senator KENNEDY. Thank you very much.

Mr. KLEIN. Thank you.

Senator SIMPSON. Mr. Klein, I want to say I share Senator Kennedy's view totally. Ever since I became involved in this issue, I have said publicly that without the voluntary agencies nothing is going to work.

Senator Kennedy, thank you very much, and if you wish to drop back at any time, we will take any questions you might have then.

Now, Mr. Klein please proceed. Take another 3 or 4 minutes. It is very generous of me to throw that out.

Mr. KLEIN. Yes. I will go for 4 and ask for 5.

The first of these three principles was the principle of control. There is no way that we can operate without having control.

The second principle is that we must—our mass asylum policy must be consistent with what we ask of other nations.

The third principle that we feel is fundamental is that we must observe the tenets of due process in the way in which we deal with the varying circumstances of asylum seekers.

The right to due process is one of the few qualities that distinguishes us from much of the rest of the world. Granted, due process does not always yield the most efficient system. We know that. But it is that which separates us from Hitler's Germany, Stalin's Russia and Idi Amin's Uganda. Due process it not only our way—and I think this is important—it is also the only practical way. A policy that does not provide for due process for individual as well as group asylum seekers will be consistently and repeatedly challenged in our courts, thus tying up the whole system, as has occurred in the past with respect to Haitians. Due process is, therefore, a prerequisite for a workable policy.

Now, Mr Chairman, there are a couple of things that can confuse a mass asylum policy, and I would just like to touch on them briefly. First, there are the circumstances of individuals caught in this country by events in their home countries, usually military, when it is not in their best interest, when it is dangerous for them to go home. This was referred to in this morning's discussion. I do not think we should confuse people needing safe haven on a temporary basis with refugees seeking asylum or relief on the basis of persecution, as you point out. These people need safe haven, and I think the mechanisms exist to deal with this in the indefinite voluntary departure as in the case of Lebanon and Nicaragua.

The second situation is hypothetical but could happen where you get people moving across third countries to our borders seeking asylum. In that case, I think much as we would like to be responsive, we need to recognize that the country that they are moving across, let's say Mexico, we have to consider as the country of first asylum. We may have to recognize obligations to help that country deal with their first asylum problems, but that is quite different from the United States being the country of first asylum.

However, the heart of the matter is another Mariel or another Haitian phenomenon which faces us today. We propose a mass asylum policy based on the following guidelines:

One, however uncomfortable the immediate implications, we must accept the obligation of being a country of first asylum. In practice, this means that we do not interdict at sea and we do not push boats off our shores.

Two, in accepting our responsibility as a country of first asylum, we must reserve to ourselves the right to detain asylum applicants or permit them temporary access to our society either as a group or on a case-by-case basis, depending on what we deem to be in our best interests. And there are obviously some considerations that go into this.

Three, we must recognize that there are far more people in the world, including applicants in mass asylum situations, who meet our definition of refugee than this country can or can be expected to integrate into this society. It follows, therefore, that we must involve the U.N. High Commissioner for Refugees in any mass asylum situation, and internationalize our response to those legitimately seeking asylum on the basis of a well-founded fear of persecution.

Four, it also follows that those who do not meet the test of a well-founded fear of persecution must be repatriated or otherwise relocated short of permanent admission to this society.

Mr. Chairman, neither I personally nor we as an agency feel entirely comfortable with the position we have taken. There are restrictive aspects to it. It results from a good deal of soul searching. We return, however, to our original set of principles and the conviction that America's long range world leadership and our ability as a nation to provide haven for truly needy refugees hinges on a responsible policy in which the American public can have confidence.

Mr. Chairman, in the balance of the testimony we talk a bit about due process because we know that this is one of the tricky parts of this: "How much due process?" as somebody said.

I think there are two or three elements here that must be recognized. One is speed. It is neither fair to the applicant nor to our society that we perpetuate the process. We endorse the concept of group profiles for purposes of establishing a well-founded fear of persecution, but not the use of group profiles as a basis for rejecting asylum applicants.

We feel that there needs to be an appeal or review mechanism separate from the original adjudication, but that the appeal process should not go on forever, again, in keeping with the applicants' interests and our own.

And finally, Mr. Chairman, we feel that it is terribly important that the applicants, since they are not familiar with our language, our customs, our laws, and since it is terribly important for them personally to have real access to representation rather than formal access.

Senator SIMPSON. Thank you.

Mr. KLEIN. We will be submitting, Mr. Chairman, some more detailed suggestions on this to you for the record if we may.

Senator SIMPSON. It will be very helpful if you will. It will be accepted at the time of presentation.

Mr. John Tenhula please proceed.

STATEMENT OF JOHN TENHULA, COMMITTEE ON MIGRATION AND REFUGEE AFFAIRS OF THE AMERICAN COUNCIL OF VOLUNTARY AGENCIES FOR FOREIGN SERVICE, AND ON BEHALF OF THE CHURCH WORLD SERVICE, NATIONAL COUNCIL OF CHURCHES, AND AMERICAN COUNCIL OF VOLUNTARY AGENCIES

Mr. TENHULA. Thank you, Senator, and thank you for the invitation to address this hearing.

I am speaking this afternoon on behalf of the American Council of Voluntary Agencies for Foreign Service, some 13 voluntary agencies, both secular and religious, who have collectively resettled 2½ million refugees in this country since 1946.

I must say, Senator, having refugees in my own family who also have moved to the State of Wyoming——

Senator SIMPSON. Aha.

Mr. TENHULA. I am a little distressed at the number of reports that we have heard in the last 2 days about refugees being responsible for crimes, serious health problems, lack of ability to learn English, et cetera. I think we also have to remind ourselves of the contributions, and sometimes we forget that.

I am also a little distressed at the term "refugee industry." The bottom line of the voluntary agencies and the commitment we hold is that we are working with people, and I think in the last 2 days sometimes we have forgotten that. These are people. These are human beings we are talking about.

This testimony represents the principles that we as voluntary agencies adhere to. They are common denominators, not specifics. They are the basic concerns for people on our shores, first asylum people.

I want to summarize my testimony. I know the time is limited. I have prepared a full length copy, and I would hope that would go in the record.

Senator SIMPSON. Without objection, it will be accepted.

Mr. TENHULA. What we have learned in the last 2 days, and heard again and again, is that with passage of the Refugee Act of 1980, a welcome piece of legislation for everyone working in refugees, that bill failed to do one thing. It failed to provide any coherent or comprehensive policy or law dealing with asylum seekers, those who are physically present in the United States, wanting to be called refugees under our definition.

Even today, the United States has no policy or program of dealing with groups seeking asylum here. The possibility of selecting refugees overseas, which also means security, health screening, and a sponsor ready to guarantee their movement here, ended in a very dramatic way last year when Cubans and Haitians made their way to our shores. Most recently, Haitians and Salvadorans continue to arrive on our shores.

Has U.S. immigration turned sides from a country of hospitality to that of being one of hostility? Are we to forget our heritage as we now open detention camps throughout the United States and in Puerto Rico? Have we simply directed our actions to state out of sight, out of mind? Are we ignoring the plight of refugees?

Concerning the granting of asylum, U.S. experience has been one of acknowledging single and isolated cases that have often reflected U.S. political attitudes toward asylees and refugees.

The United States found itself a host Nation to uninvited Cubans who, for whatever reason, left or were pushed out of Cuba. The numbers of mentally impaired, handicapped, social misfits, and homosexuals were greatly exaggerated and highlighted by our press, this especially in the areas surrounding the four stateside camps in Florida, Wisconsin, Pennsylvania, Arkansas. However, most of those who came—and I want to underline this—came to join themselves with relatives, and the majority of these people have adjusted. We are talking in numbers of about 1,000 people who are left in Fort Chaffee, 1,800 people who are in detention, at the Federal Correction Institute in Atlanta. I want to remind you that this is a small percentage of that total 124,000 Cubans.

The Haitian influx offers a more difficult situation to understand. Underlining all this is the question we have heard for the last 2 days. Are these economic or are these political refugees. The U.S. State Department and Justice Department officials continue to argue that Haitians are economic migrants seeking employment and a better life in Florida, the United States. Their plight is not an easy one to explain. Over 1 million Haitians today, of a nation of 6 million, are out of their country. This is a concern not just for the United States but for the Caribbean.

Since 1972, Haitians have sought asylum on our shores, with an estimated 11,000 Haitians arriving on the southern Florida shores during 1981. The issue has found its way into the court system, and reference has already been made to the July 1980 Federal court ruling by Judge King in the fifth circuit court in Miami, that criticized in very strong language both the Justice and State Departments for having discriminated against Haitians with a "systematic and pervasive discrimination by the Immigration and Naturalization Service."

The Government's appeal to that decision was heard in Atlanta in June of this year, and no decision has yet been reached.

Monitoring treatment of our Government's response to Cuban and Haitian arrival seems to demonstrate a discriminatory system of treatment, and this has been stated before. The voluntary agencies' concerns range from inappropriate INS I-94 stamping, to unequal care and maintenance and processing of Haitians. This wide range of issues begins with involvement and use of Government funds and agencies. To the present day, unequal processing of immigration documents occurs.

Certainly no other asylum group on our shores—I want to underline that—no other asylum group on our shores of unaccompanied minor children would have been treated and are being treated today with the separation and the uncertainty as the Haitians who are now housed in Greer-Woodycrest, N.Y., children separated from their family or possible family in the Miami and New York area.

The Carter administration's policy of responding to the Cubans and Haitians was to not call them refugees. I want to give a quote from Ambassador Victor Palmieri: "Refugee status would not be presented as an award for their voyage here." And I would call

your attention to the official policy of June 20 of last year. I will not read it. It is in the text.

The results of handling both groups, Cubans and Haitians, has been detrimental to their welfare and has caused not only bad feelings in refugee-impacted areas of Florida, but a severe drain on social service and education systems waiting to be adequately compensated by the Federal Government. And if cost was a consideration in this program, as I think has been pointed out, surely this Government gets poor marks.

Clearly, the voluntary agencies——

Senator SIMPSON. Mr. Tenhula, I don't want to be rude, but I have allowed the time to expire.

Could you please summarize your remarks very quickly, please.

Mr. TENHULA. Clearly the voluntary agencies responsible for refugee resettlement have gone through a very difficult time within our networks, and constituents around the country, trying to explain entrant status—trying to act in a very fast and swift way of responding to people who have immediate needs. I would hope that this testimony submitted for the record will explain some of those points we are trying to stress, that in our networks we respond to the human need, and that as we have responded in the past, we want to respond in the future. But we need a clear, concise, coherent policy of dealing with mass asylum.

Thank you.

[The prepared statement of Mr. Tenhula follows:]

Prepared Statement of John Tenhula

With passage in March 1980 of the Refugee Act of 1980, the United States acquired its first refugee policy in statute, a welcome piece of legislation in that refugees throughout U.S. history had been admitted through a variety of ad hoc admission procedures. The bill accomplished two objectives: it established a uniform policy for refugee admissions; and a domestic policy of resettlement assistance. What the bill failed to do was provide any coherent or comprehensive policy or law for dealing with asylum seekers - those who are physically present in the United States wanting to be called refugees under U.S. definition.

Even today, the United States has no policy or program of dealing with groups seeking asylum here. The possibility of selecting refugees overseas (which also means security, health screening and a sponsor ready to guarantee their movement) ended in a dramatic way last summer when some 125,000 Cubans and 11,000 Haitians (who continue to arrive) landed on our shores. Most recently Salvadorans are arriving in increasing numbers.

Has United States immigration turned sides from a country of hospitality to that of hostility? As we open detention camps throughout the U.S. and in Puerto Rico, have we simply directed our actions to state - out of sight out of mind? Are we ignoring the plight of refugees?

Concerning the granting of asylum, the U.S. experience has been that of acknowledging single and isolated cases that often reflected U.S. political attitude toward asylees and refugees. It was in November 1970 that U.S. national attention was focused on asylum provisions when a Lithuanian seaman, Simas Kudirka was forced to return to a Soviet vessel moored to a Coast Guard cutter in U.S. territorial waters. The result of all this was a set of new "Guidelines" from the Secretary of State approved by the White House in January 1972. The Guideline insisted that "the request of a person for asylum or temporary refuge shall not be arbitrarily or summarily refused by U.S.personnel, and stated that the basic objective of the policy on right of asylum was "to promote institutional and individual freedom and humanitarian concern for the treatment of the individual." Certainly no other asylum flow better demonstrates the failure of those Guidelines or for the fears and shouts of "enough" more than the recent Cuban and continuing Haitian and Salvadoran influx. What went wrong?

The United States found itself a host nation to uninvited Cubans who, for whatever reason, left or were pushed out of Cuba. The numbers of those mentally impaired, handicapped, social misfits

and homosexuals were exaggerated and highlighted by the press -- especially in the areas surrounding the four stateside camps: Elgin Air Force Base, Florida; Fort McCoy, Wisconsin; Fort Indiantown Gap, Pennsylvania; and Fort Chaffee, Arkansas. However, most of those who came, came to join their relatives and have since well adjusted.

The Haitian influx offers a more difficult situation to understand; underlining all of this is the question: Are these economic or political refugees? U.S. State and Justice Department officials continue to argue that Haitians are economic migrants seeking employment and a better life in Florida. Their plight is not an easy one to explain. Over one million Haitians of a nation of six million are out of the country. The poverty of Haiti is real and the Haitian people hurt.

But the repression in Haiti is documented. When Papa Doc Duvalier gave his title of President-For-Life in 1972 to Baby Doc, a great deal of discussion was sounded concerning a lessening of repression. Not so. Duvalier rules Haiti with an iron fist and is supported by a secret security force that controls local government and rival activities with a feudal allegiance of Duvalier. The Amnesty International Report of December 18, 1978 stated: "The apparatus of repression established under Francois Duvalier remains in place under Jean-Claude Duvalier." Human rights advocates stress that Haitians who have left Haiti jeopardize their welfare and safety if returned.

Since 1972 Haitians have sought asylum in the U.S., with an estimated 11,000 Haitians arriving on the southern Florida shores during 1981. The issue has found its way into the court system. In July 1980, Federal Court Judge King ruled in the Fifth Circuit Court in Miami that both Justice and State Departments have discriminated against Haitians with "systematic and pervasive discrimination by the Immigration and Naturalization Service (INS)." The government's appeal to that decision was heard in Atlanta in June 1981; no decision has yet been reached.

GOVERNMENT RESPONSE AND POLICY

Monitoring treatment of our government's response to Cuban and Haitian arrivals seems to demonstrate a discriminatory system of treatment. Our concerns range from INS inappropriate I-94 stamping to unequal care and maintenance and processing of Haitians. This wide range of issues begins with involvement and use of government funds and agencies (Federal Emergency Management Agency, FEMA) that assisted Cubans and not Haitians, to the present day unequal processing of immigration documents. Certainly no other asylum group of unaccompanied minor children would have been treated by

separation and uncertainty as the Haitians were, housed in Krome South and now Greer-Woodycrest, New York. Anthropologist Virginia Dominquez stated before the June 1980 House Subcommittee on Immigration, Refugees and Naturalization:

> Although President Carter has publicly stated that the two groups will be treated equally, there is as yet little sign that this is happening. The Cubans are screened more 'for resettlement' rather than to determine their eligibility for refugee status. The Haitians are detained for three days for health examinations. Then the INS busses them to Miami's little Haiti without, in many cases, finding housing.

The Carter administration's policy of responding to the Cubans and Haitians was to not call them refugees. "Refugee status would not be presented as an award for the voyage here," stated United States Refugee Coordinator Victor Palmieri in the early days of the movement, and the official Policy Statement of June 20th stated:

> In order to redress this extraordinary situation, yet maintain the integrity of our refugee laws for those applying for admission in the prescribed manner, the President has decided to seek special legislation regularizing the status of Cuban-Haitian entrants. This legislation will allow them to remain in the United States and will make them eligible for certain benefits, but it will not provide the status or benefits accorded to those admitted as refugees or granted political asylum.

The results of handling both groups has been detrimental to their welfare and caused not only bad feelings in refugee-impacted areas of especially Florida, but a severe drain on social service and education systems waiting to be adequately compensated by special Federal legislation. And if cost was a consideration in this program, surely the government gets poor marks.

Clearly the voluntary agencies responsible for decades for refugee sponsorship, have been taxed from the very beginning. We have gone through seven different Cuban refugee resettlement contracts.

We were asked to respond to the desperate need of asylum seekers, often called refugees but treated as undocumented and illegal and unwanted aliens. And we did respond.

Through the secular and religious networks of the voluntary agencies around the country we placed the majority of Mariel Cubans and a large number of Haitians in a resettlement opportunity with a stated goal of self sufficiency. Our success in assisting homeless people toward a new life has often been overlooked by the dramatics of the special needs of a minority number of these people.

The formation, then phase-out, of the State Department's Cuban-Haitian Task Force into the Office of Refugee Resettlement,

Health and Human Services has created severe work problems for us. We continue to be asked to assist resettlement of Haitian refugees from the intolerable conditions of Krome North Camp in Miami and now possibly Federal Prisons and Puerto Rico. Our resettlement experience has shown that Haitians are often denied necessary social services and fall into exclusion proceedings in the community they choose to live in. This is probably the most dangerous aspect of our lack of an asylum policy: the handling of the asylees' legal status and INS documentation, a critical issue for a domestic resettlement program. Willing sponsors are still confused over "entrant status." Our future refugee resettlement work has been complicated by the inactions and lack of policy of this program.

We receive reports continually from around the country of confusion and misunderstanding of the procedures and methods used to conduct asylum interviews. Certainly this is reflected in the recent June 1981 closed group courtroom hearings of Haitians in Miami who did not have access to counsel and did not fully understand their rights or the proceedings.

We are also aware of the continued difficulties Salvadorans are having in applying for political asylum. Over 4,500 applications nationally are pending. All this as the State Department continues to decide if conditions in El Salvador merit these claims of a fear of persecution if returned.

The creation of refugees and refugee-producing situations has become a daily global phenomenon, and recent events seem to reinforce the words of former INS Director Leonel Castillo: "The next 20 years will see an untold number of homeless and poor people knocking at our door for admission -- how will we respond, in what way will we decide who shall enter who should we welcome."

What should be the policy considerations of the U.S. for asylees? The following are three suggestions: international awareness of this problem, equity and enforcement; and getting to the root causes.

INTERNATIONAL AWARENESS OF THIS PROBLEM

Today, mass asylum is not a U.S. phenomenon but part of a global migration of people seeking a new life and opportunity. In 1980 Germany recorded over 100,000 asylum applications, and over 10,000 East Europeans, mostly Poles, are crowded in camps in Austria today. The same pressing concerns are heard in France, Greece and Italy. Recognition and action is required by the international community. What is needed now is a system of criteria and standards that can be adopted by member governments, ensuring some degree of equity to the increased asylum requests being received by states today.

Asylum has increasingly been stretched, confused and misunderstood. Certainly this is of deep concern to our national voluntary networks and religious communities. People in uncertain status are vulnerable to abuse. For the U.S., this means coming to terms with a policy and program to deal with the reality of mass asylum. There are several guidelines that deserve serious consideration.

The final report to the President in March 1981 of the U.S. Select Commission on Immigration and Refugee Policy offers sensible goals and objectives such as: (1) the maintenance of the U.S. as a "country for asylum for those fleeing persecution" (2) the adoption of policies and procedures that will deter abuse of asylum, and (3) expeditious handling of individual asylum claims.

We stongly support the Commission's recommendation for the establishment of an interagency body like a Refugee and Asylum Review Board to oversee all aspects of the process. This Board could help to develop and clarify asylum standards and procedures; periodically review selected applications for political asylum as a means of providing uniformity of treatment for all countries and in all INS districts and to consult with Congress and the Executive branch when emergency situations arise.

We support the Select Commission's recommendation about creation of federal asylum processing centers, provided they offer fair treatment and free access; this especially in light of the present use of Federal Correctional Institutions and Fort Allen, Puerto Rico, for Haitians and the possible due process violations these people may incur.

We feel that the protection of a review of asylum applicants on a case by case basis must be respected by INS Regional Directors. We also urge the use of extended voluntary departure as a means of meeting emergency asylum needs. The Select Commission's recommendation of a group profile raises questions, as yet unanswered, as to how objective assessment of refugees producing conditions can be accomplished. But most important is the need for improving the efficiency of the asylum process. The present system of individual review with the State Department's Bureau of Humanitarian Affairs is hopelessly bogged with the present national caseload which now exceeds 185,000. We are also aware that lengthy and costly litigation in our courts is not the answer to this problem.

The present INS interim regulations for asylum requests under the Refugee Act of 1980 lack clarity and direction. There is a little logic in refugee matters bureaucratically falling under the mandate of the State Department's U.S. Refugee Coordinator's office

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and asylum matters under the mandate of the Bureau of Human Rights and Humanitarian Affairs (BHRHA). Refugees and asylees are directly interconnected and should be managed from one office.

GETTING TO THE ROOT CAUSES

In conclusion, we must protect the welfare and safety of the asylum seeker who has a well-founded fear of persecution. This means creating an asylum policy that is applied with equity. The resent experience of treatment of asylees demonstrates what in policy and program should not happen.

American Council for Nationalities Service
American Fund for Czechoslovak Refugees
Buddhist Council for Refugee Rescue and Resettlement
Church World Service
HIAS
International Rescue Committee
Lutheran Immigration and Refugee Service
Migration and Refugee Services, United States Catholic Conference
Polish American Immigration and Relief Committee
The Presiding Bishop's Fund for World Relief
Tolstoy Foundation
World Relief
Young Men's Christian Association

Senator SIMPSON. Well, I thank you, and that is certainly what we are embarked on, to try to get to that.

I have more than several questions. With this panel, I really feel like a person coming upon a gold mine of authority, information, and counsel, and that is what we need in this area.

We do have a rollcall vote so I will leave, but I do not want to leave this hearing in charge of staff. So allow me about 10 minutes and I will come back. We will recess during that time, but I have a few minutes left before I must leave.

One of the matters on which I hope we can reach a consensus—try this one—is to do something with the present asylum hearings and appeals process. I would like to hear from those of you who are involved in it, and especially you, Mr. Swartz, who have seen exactly how it works.

Let me enter into the record what you do right now in America to claim asylum, just taking about 1 minute. First you have an appearance before the INS District Director, and if he says no, then you have a second de novo, brandnew appearance before the immigration judge. If you are unsuccessful there, then you have a third appearance before the Board of Immigration Appeals on a de novo proceeding. If you lose there, then you go to a fourth appearance by filing a writ of habeas corpus in the U.S. district court, and if you are unsuccessful there, you then appeal on the fifth appearance and go to the court of appeals.

And then when all of that is over and you are still with it, then you can say that there are changed conditions or new facts, at which time you can start again at "Go" with the immigration judge and go on up back to the Board of Immigration Appeals.

Do all of you agree that this system should be altered or compressed in some way?

Mr. SWARTZ. I certainly can agree with that.

Mr. GIBBS. Yes.

Mr. SWARTZ. But in so doing, I would want to emphasize that just as it is important to be rational and expeditious while fair in the manner in which we make these decisions, so it is important that the Government not act lawlessly itself. The fabric of our society is eroded, I think we can all also agree, with lawlessness, whether it is lawlessness real or perceived by people crossing the border illegally, or perhaps even more importantly, the lawlessness of the Government.

One of the problems, of course, that the Haitian situation confronted was, as Judge King found, absolute, intentional, pervasive lawlessness by the U.S. Government. Again, congressional oversight hopefully can bring that under control, and many of us can work together in devising fair and expeditious proceedings.

Mr. KLEIN. I would like to add, Mr. Chairman——

Senator SIMPSON. Yes, Mr. Klein.

Mr. KLEIN. It seems to me that there is not a very precise correlation between the number of appearances before an adjudicatory body and due process and fairness. I don't see any high correlation. I would agree with Rick's point that there is a tendency in emergencies or in pressure situations that those responsible for implementing policy to take an expedient route, and in any mass asylum situation there are those pressures.

Therefore, I would fully agree with the necessity of oversight to make sure that expediency does not undercut due process and fairness.

Senator SIMPSON. I agree totally, but in 20 years of practicing law in a very general practice from the police court to the Federal district court, with juries, and nonjuries, and administrative law, I have been surprised, as an understatement, at the procedures in the INS and the system that one goes through to claim asylum. If you can call that due process, and I do not think you can, I know of no other procedures in any other branch of the profession or throughout the judicial system that are as complex and ponderous.

During this hearing the witnesses, without exception, have testified that something must be done there. Former Attorney General Civiletti suggested a one-shot petition in the civil area and one shot in the appeal area, and I think that obviously we will get to that. We will appreciate your views in some detail as we work on that provision.

And let me say to you before I go off—I have about 7 minutes to get to the floor vote—is that we have on this subcomittee a fine staff, and many of them are here, minority and majority. You are going to get to know them very well: Dick Day, the chief counsel and staff director; Jerry Tinker, the minority staff director; and Arnold Liebowitz, a fine attorney, Donna Alvarado, and Chip Wood. You will find that we are embarked on what I know is an extraordinary venture, but we feel that toward the end of September we will have a rewrite of the Immigration and Nationality Act, and it will be in English. And we know that that is a threat to the entire foundations of Government, but we are going to give that a

try and see how it works. We will appreciate your views throughout.

I am going to return. We will recess for about 10 minutes.

[A brief recess was taken.]

Senator SIMPSON. The hearing will come to order, and we will proceed.

Thank you for your patience on that one.

When I concluded there in making that rather sweeping remark about the revision of the Immigration and Nationality Act it is a task which the staff has been tackling since January and February. We will try to use that as a vehicle to use for consideration of all legislation that will be presented, and give due consideration to each and every bill submitted. I would like to see the old efficiency bill from the last session passed as soon as possible. In an effort to keep building a good constituency I have left its controversial elements as part of the comprehensive reform package because I really do believe that there is a very large constituency out there that has never been gathered before, some for the very wrong and worst reasons, but most of them for the best reasons. It is our job to see that it is the best reasons that serve as the basis for our immigration and refugee policy reform.

I believe both Mr. Swartz and Mr. Klein mentioned the problem of backlash of public opinion against immigration in general. I am very concerned about backlash not only because of the community tensions which are engendered, but also because it creates the worst possible climate for politicians developing public policies.

Well, I think all of you or most of you have recognized that it is unrealistic, and you have said that, to expect that the United States can resettle all legitimate refugees from around the world who make it to our shores. And you recommend that the United Nations High Commissioner on Refugees should be brought into the process to internationalize the responsibility for those people, and I share that view.

Yet, I think we are faced with the quandary that the United Nations High Commissioner on Refugees will only resettle refugees to third countries if the refugees choose to go. How, then, do we deal with situations where most of the refugees choose to remain here in the United States?

Mr. SWARTZ. My first reaction would be to remind ourselves of the concept of, in effect, preventive medicine, and in looking at approaches to these kinds of problems. You have got an estimated 200,000 Salvadorans in Honduras. Those are the estimates I am hearing. Those are not people that are yet here, but the buildup of the pressure in Honduras from that number creates danger of instability over time, and almost a domino effect, in part contributed to by the refugee migration. That is an awful lot of people coming into Honduras in the last 7 or 8 months, and they have had a hard time handling it.

If we were to encourage the United Nations—and they are already in Honduras—to develop resettlement opportunities out of that country, in part in our national security interests and in part so that the pressure of Salvadorans, or others in Honduras or now in other Central American countries to come to the United States

might be alleviated because they would have resettlement opportunities prior to feeling tremendous drive to come here.

Similarly, with Haitians in the Bahamas or Haitians in other Caribbean areas. We have got people who are not coming directly from Haiti but from the Bahamas, or from other areas, in part because of push factors in their first country of first asylum. We should look at international solutions and international resettlement opportunities for legitimate refugees in this hemisphere who want to come here, perhaps, but are only at step one in the process.

And second, perhaps the United Nations, through a range of international diplomatic efforts, and given the realities in this hemisphere, could think about changing its rules. I imagine the United States would have some influence over that process.

Senator SIMPSON. Mr. Klein, would you care to respond to this question?

Mr. KLEIN. I just want to comment that there are not necessarily answers to all of the questions for which we would like to have answers, and I think that may be one of them, or it may be something we are going to have to work over in time.

I do remember hearing from a colleague in the State Department the other day an anecdote about the Cuban situation, They had gone to great lengths to get, I think it was Argentina, but I am not certain, to take 50 Cubans. They had gone to whichever camp it was, interviewed them, went back to Washington to do the paperwork and to go through whatever formalities had to be done. They then went back to the camp to begin processing the Cubans out of the camp to this third country only to find that we had already resettled them out of the camps. In other words, our own processes have to be designed effectively to facilitate third country, other third country resettlement.

Second, we have a greater degree of control over the pull factor than we do the push factor. We talked about signals earlier in the day. I think some of the signaling may have some effect on the numbers that come, but we may indeed find ourselves with a population here that is going to be difficult to resettle in third countries. I would only point out that this is a situation in which many other nations find themselves. If you look at the African refugee situations, the receiving nations have very often kept large numbers. It is not desirable, it is not what we want. But I am not sure that we will be able to have every answer in a single piece of legislation that is going to work. It may have to be molded, modified, and massaged over time.

Senator SIMPSON. Then we come back to what you all speak of, and that is the backlash which is building. Yes, Mr. Tenhula.

Mr. TENHULA. I would think the use of extended voluntary departure for Nicaraguans of recent use, and the return of Nicaraguans should be looked at. How has that program worked? Certainly it has been mentioned in use for the Salvadorans. Perhaps not everyone wants to stay here, but there is a temporary time period until conditions change.

Senator SIMPSON. I would be interested in your views. That was a question I had: What are we going to do about people who are given extended voluntary departure who do not want to return when that status expires? And someone suggested, I think it was

Mr. Klein, that extended voluntary departure was a good means of providing a safe haven temporarily.

But what about that?

Mr. KLEIN. I was referring to people who are already in the United States. I am not sure that there is a significant difference between trying to deport them now as against a safe haven, indefinite voluntary departure until the situation changes, and then if they don't want to go, I think we have to protect our interests and go through a deportation process, and there will be a group that we do not—who do not leave the country in either circumstance.

Senator SIMPSON. Yes.

Let me just ask several questions, and you can respond as you wish if this is an area of your particular interest.

Do all of you believe that applicants for asylum should continue to be resettled into communities pending determination of their status?

Well, whether you agree on that or not, let me know how you feel on that.

Mr. KLEIN. No, sir, I would say that the decision to detain or release a resettlement in to society pending determination of status is something that should be approached with flexibility. That decision would be based on several considerations. One, retrievability of the applicant, that is, if the decision is made that they do not meet our asylum criteria, would we be able to retrieve them from the society and find other alternatives.

Second would be their ability to exist in the society.

Third would be the society's ability and willingness to accept them. You know, we have heard a lot today about acceptance of people in society. I think that has to be one of the considerations. I would suggest that these determinations can be made on a group-by-group basis or a case-by-case basis. Again we have to be realistic. Nobody likes to have people in a detention camp or refugee camp as against living in a society, but there are occasions when this is necessary.

Mr. GIBBS. I think that was somewhat inherent in the point that I was making with the establishment of the detention centers. The deplorable conditions that exist in Krome North cannot continue. We must look for alternatives to detention centers when we are dealing with large numbers of asylees. Placing individuals in the community may be a more humane way of treating people while the determination of status is pending. Detention centers are costly and must be run more effectively than Krome North.

Mr. SWARTZ. I would generally agree that under some circumstances detention may be warranted. I would rather have it be detention, in effect, in an internationally run detention camp than a Federal prison where we now have Haitians. There are other people we should reserve our Federal prisons for, such as convicted felons.

However, I think there are a range of problems with detention that are very practical as well as legal and human in character. Briefly, of course, the cost at some point in time becomes significant. I think there is a great danger that if a detention policy is adopted for people claiming asylum, that the policy will drive the problem underground. That word will get back through the net-

works. It would increase incentives for surreptitious entries. It would decrease incentives for people to present themselves to INS. Quite frequently, until very recently, the Haitians in significant numbers were presenting themselves voluntarily to INS, coming forward. The detention policy, when that was adopted, changed that pattern.

With somewhat more relaxed policy toward detention, greater numbers of people came forward and made themselves known to INS in the hopes that they might procure some benefits. Back again to a detention policy, and I think we are going to have the danger of even greater problems for the community because of enhanced numbers of surreptitious entries, people not coming forward, people afraid to get medical care, and communicable disease becoming a more difficult problem. That also has to be looked at.

And perhaps detention isn't the right word. I think refugee facilities that really aren't prisons but that have some mechanism of control.

Senator SIMPSON. That was a matter we discussed in the Select Commission proceedings. If you build a refugee facility, a permanent facility, what signal have you sent there? Isn't that just an inducement for even larger numbers of refugees to come to our shores? And I must say that, in my 3 years here, I have never confronted an issue such as immigration where no sooner do you attempt to take action on one aspect of the problem, then it pops up someplace else. It's just like that little play-school game where you hit the hammer on the peg and say, aha, I took care of that, and then you turn it over, and there it is again.

That illustrates the exceeding frustration of the whole picture of immigration reform, and that is why the Select Commission grappled and finally came up with something. It took us 2 years. Now the Reagan Task Force on Immigration and Refugee Policy has grappled with these problems. They could have spent 400 more hours debating these issues and we still couldn't have gotten any closer to an ideal solution.

Mr. SWARTZ. I guess if I could, back to something I said earlier, not all of this has to take place on our shores. I mean, there is a hemispheric and a basin problem, and the magnet effect can be real. I would not quarrel that it is fallacious to suggest that it can happen, but perhaps there are some ways in which the magnet can be spread around, in effect.

Senator SIMPSON. Yes, Mr. Tenhula?

Mr. TENHULA. What you do not want to do is repeat the experience we have gone through in the past year of providing no legal status and then asking resettlement to take place based on the work that we have done collectively for refugees. This is a confusion and a pain to not only the refugees and asylum applicants, but the sponsors and local communities. On the one hand you are moving people out of a camp situation because of a desperate need and constant pressures of numbers. To what end? How do you recall them if they need to be recalled?

Senator SIMPSON. One of the problems we will deal with is, you know, what policies we should pursue to respond to the negative impact expressed out in the communities by residents who feel they are being asked by the Nation to shoulder an inordinate

burden. We also need to examine whether a policy of resettlement might create an incentive to economic migrants to apply for asylum simply to get a work permit and the right to remain here.

Those are things that cause me a lot of vexation.

But the next question deals with the large numbers of Cubans and Haitians who have come in. We have heard from many cities, and I have spoken with mayors who decry the sponsorship breakdown which results in many unemployed and, oftentimes sick or elderly, entrants simply being left out on the streets becoming a problem to the community.

Do you believe that sponsorship should require a higher level of responsibility? And if not, what steps would be taken to insure that applicants for asylum do not become a burden to the local communities?

Mr. GIBBS. I think I can speak for the counties on the issue of resettlement. This gets to the issue of backlash at the local level. State and local governments are going to be experiencing, come October 1, a tremendous reduction in Federal dollars across the board for human resource programs. We are talking of food stamps, energy assistance, AFDC, medicaid. Many people are going to be removed from public assistance programs.

The question of equity arises in terms of what we do for U.S. citizens and what we do for refugees. This issue may result in a backlash that locally elected officials are going to have to deal with.

We have concern that certain factors are not taken into consideration in resettlement such as unemployment, housing availability, schools, and so forth. We would hope that other options might be explored with resettlement. We are familiar with the fact that 80 percent of the resettlement is family reunification, but there is 20 percent where there might be some opportunities to resettle refugees in other parts of the country other than south Florida or Orange County, Calif.

The Cambodian cluster project is one initiative that is worthy of examination. This project takes a new population of refugees and finds areas in the United States to resettle 100 to 200 refugees. The project takes into account social, culture, and economic factors in the resettlement.

Finally, the issue of Federal reimbursement is real. The budget constraints that local governments are going to be confronting may cause resentment and a backlash to further refugee resettlement efforts.

Senator SIMPSON. Yes, Mr. Tenhula?

Mr. TENHULA. Senator, I think you mentioned before sponsorship education, and I would underline that. The difficulty with the Cuban and Haitian resettlement program for our sponsors around the country has been to call these people entrants or asylum applicants means that they have been given a 90-day work permit, and when that work permit expires, they have to show themselves or identify themselves before the local INS office.

This is a legal complexity for the sponsor that is a first time. It is the first time that has happened. Sponsors have been chosen for all refugees. In all cases the refugees have been overseas. They are moving from a processing center or housing facility overseas to the

United States. They know where that sponsor is going to be, and there has been sponsor verification, and means of checking family identity, reunification. That luxury, that administrative luxury was not the case with the Cubans and the Haitians. They arrived on our shores. In the confusion of camps opening, closing, transferring, a lot of information, a lot of communication broke down.

It is no secret also that 20 years of political government in Cuba has produced families that have different ideas, brother, sister, mother, father that have been resettled with Cubans here 20 years, and there has been a great deal of breakdown within the family situation.

Senator SIMPSON. Senator Grassley left a question with me that would be appropriate now. Iowa, I think most people would admit, has a very successful refugee resettlement program, and in part, I think, he is indicating it is because of strict requirements for sponsors such as full-time employment, 1-year residency, an onsite visit to the sponsor's home, assistance from an American advisor, an affidavit stating intention to assist with a job, and so on. And yet, that has certainly not been a similar procedure with Cubans and Haitians, has it?

Mr. KLEIN. Mr. Chairman, a couple of comments.

First, the Cuban situation. In retrospect, the vast majority of the Cubans were not resettled in the conventional sense. The Cuban influx took place, you know, during a time when there was a national political campaign. It was a politically sore subject, and the response of the administration was a knee-jerk response intended to empty the camps as rapidly as possible. The voluntary agencies were not, in this context, able to do normal resettlement, and I don't think we claimed we did resettlement. We were under intense pressure to move people out.

Second, I think there is a growing degree of sophistication developing in identifying weaknesses of sponsorship development and sponsorship. I am not sure that all of the gestures of the program are—you know, I am not sure models that would work everywhere else, but it is increasingly clear that the national agencies involved in the resettlement do need to place more emphasis on backup support to private sponsors or congregational sponsors or family relationship sponsors. None of us, I think, would be involved in simply bringing a family member here and placing him with an already-dependent, let's say, Indochinese family of previous refugees that haven't made it economically. There are always slips. We are dealing with large numbers.

Additional communication, cooperation, and coordination is going on between the public and private sectors. Ron and the agencies have been talking at length about this. I had an opportunity to speak before his meeting of county officials a few weeks ago where we sorted out some issues.

There are some new models being developed where we are trying, with the public sector, to better identify responsibilites for resettlement, to better coordinate the settlement. I hope we could come back to the committee in a few weeks, 1 month, 6 weeks, hopefully before the consultations I might add, with at minimum some planning on the books of some new models of resettlement,

showing cooperation between public and private sectors that will deal with some of the problems which do exist.

Senator SIMPSON. Yes, that consultation is coming, and it is coming in September and you are going to find a House and a Senate that want to truly consult, and that is going to slow the process somewhat. Both Congressman Mazzoli and I and the ranking members of both committees want to be fully involved in that and to be assured that when we set a limit of 50,000 we don't get 230,000. So let's either get realistic or do what we are supposed to do as a consulting body.

Yes, Mr. Swartz.

Mr. SWARTZ. On the sponsorship and resettlement issue—and again, as someone who has seen a lot of different stages of this, from the people being resettled to the State and local governments—two points that I think are worthy of being noted. One is I think the administration is correct in introducing a package to provide legislative and fiscal authority to deal with the crisis. I wrote an article last year arguing that in my judgment the major mistake made was not to resolve the status issue immediately, and to thereby set in motion thereby a range of existing authorities and fiscal relationships. And related to that was that by failing to resolve the status issue we had total institutional chaos. No one knew who had legal authority to do what. No one knew where the money was coming from or who had authority to pay it out. The voluntary agencies "resettled," I guess, thousands and thousands of people in expectation of reimbursement. The documentation system was chaotic throughout, and people had documents that read work permitted until January 15 and they lost their jobs on January 16. That was perhaps inevitable given the state of INS, but created a range of problems on the streets and a range of problems for the institutions involved that flowed from thousands of I-94's not reflecting what the policy was.

And so I think, although I am hesitant to support it because I don't know the details, that the general effort to come up with emergency authority, clear lines of institutional relationships, and fiscal flow is critical.

And the second point briefly I want to make is I think there are institutions in our communities that are not being accessed for the purposes of refugee resettlement, manpower training facilities, et cetera, et cetera, et cetera, and we should be looking hard at involving through the voluntary agencies and through State and local government perhaps some new institutions that could help with that work.

Senator SIMPSON. Yes, Mr. Gibbs.

Mr. GIBBS. I might respond to the issue of what constitutes effective resettlement. I think it is a question that nobody has really answered. HHS and the State Department need to define their relationship to each other in domestic resettlement. There needs to be a better system of accountability for resettlement. Right now there is no comprehensive system for resettlement in this country. I would hope HHS and the State Department would take on that challenge.

Senator SIMPSON. We shall see.

Mr. KLEIN. Mr. Chairman, may I make one comment on this?

For all of us to proceed on this—I am getting into a touchy subject I know—there needs to be a focal point for resettlement activities in the Federal Government. I make a plea before this committee that it maintain its awareness of the issue or the question of whether there is to be a U.S. Coordinator for Refugee Affairs and what the coordinator's duties shall be. This matter seems to be in limbo, and the fact that it has not been decided has a serious negative effect in dealing with the many problems that are facing us.

Senator SIMPSON. I understand that, and I am directing my attention toward that, I assure you. I feel we must have a decision there on that, and I have expressed that orally and will again in writing.

Just one more question, or maybe two. Then we will adjourn the hearing.

What about group profiles? I know that you would have a very interesting viewpoint. If you could give me a brief comment, do you favor this concept of group profiles for asylum decisions, and who would formulate those profiles?

Mr. SWARTZ. First, my reaction depends upon the credibility of the process. It probably is going to depend upon, as you indicate, who is involved.

I was struck yesterday by the statement of State Department representatives that they are not aware of any evidence that any Haitians have been persecuted upon return when they have been defendants in a major lawsuit with a Federal judge issuing 70 pages of findings of fact on what happens to Haitians returned. It was extraordinary to me that they would state that there was absolutely no evidence that any Haitians have been persecuted.

Therefore, if that is going to be their attitude when confronted with Federal court rulings and a lot of other evidence to the contrary, I certainly would not want to have the State Department making group profiles.

Senator SIMPSON. Well, now, let me interrupt because I think you are right on the point that I want to develop.

People all day and yesterday and wherever we are say a well-founded fear of persecution—and then they stop. Take it on, and under the law, and then tell us whether there is persecution. Is there persecution when they are returned on account of race or religion? I doubt that. Nationality? I doubt that. Membership in a particular social group or political opinion? That is all there is in the statute.

There may be a lot of persecution that doesn't fit in there, and if there is, then they have no choice but to send them back.

Mr. SWARTZ. I will take it on, certainly.

Senator SIMPSON. I know you will. You have done so. I am glad to have you on record.

Mr. SWARTZ. Look at those two categories, membership in a social group and political opinion. What Judge King specifically found was that there was a policy issued by the President of Haiti through the commandant of the Haitian Army that all persons who claimed asylum abroad were speaking against the government and were thereby enemies of the government, and if returned to

Haiti, the duty of the security forces was to seek them out and destroy them.

Now, that evidence Judge King—and he is by no means a radical judge—found totally persuasive, obviously by the character of his ruling. The evidence was presented, by and large, by witnesses that I myself examined, prepared, and I was not about to put anyone on the stand, I assure you, that I had the least doubt about. We spent scores of hours before making a judgment about what witness to present.

There were members of the security forces themselves who were given and carried out those orders, who themselves engaged, in some cases, in the imprisonment and persecution and other actions against these people.

So, in terms of the categories, No. 1, perhaps membership in a particular social group, the social group of those who claimed asylum abroad, or perhaps political opinion, by the act of claiming asylum, at least in the eyes of the Haitian Government, making a statement against Haiti, stating a political opinion, that act alone being what would subject them to persecution at the hands of that government if returned.

Senator SIMPSON. Well, I understand what you are saying, and I understand your zeal and your representation of your clients. I did that for 20 years. And as admirable as it is, the issue then becomes what are we going to do when everybody qualifies? That is the issue, and it comes to that. Then it won't matter what due process we have done, or what all the attributes of a free society have done, and what all we have done, for we will have overwhelmed ourselves. So it is a curious thing that we face.

Mr. SWARTZ. Senator, if I may, Haiti is an ally.

Senator SIMPSON. There are lots of allies.

Mr. SWARTZ. Haiti is an ally, and in my opinion Haiti is humiliating the United States and ripping off the United States, and taking advantage of the United States in ways that compare to what Castro did, and I just quite frankly have never been able to understand why the U.S. Government is letting that regime get away with it.

And I think that the problem is in Haiti, and I just simply do not understand why we are not going after the problem.

Senator SIMPSON. Yes, sir.

Mr. TENHULA. Senator, on your question of group profile, I was a little taken this morning by the State Department's response to questions of possible persecution if returned to El Salvador, and what we all know or have learned painfully in the press the last couple of months of conditions in El Salvador. I would be a little nervous, to concur with Rick's opinion, depending upon the State Department for a group profile, but I think there would be some other considerations. There are a variety of nongovernmental organizations to the U.N., human rights groups that do yearly profiles, and I am sure you are aware who they are.

I think, though, that they have something to consider in the protection of an individual and an individual claim for asylum. I teach at Columbia University, and I went back a few months ago and researched the whole concept of asylum. It has a very long history, and it goes back to the Greek word, but it is continually

review and protection of individuals. And I think that needs to be preserved. We need a group profile for expediency in a lot of these issues, but we also need that consideration of the individual.

Senator SIMPSON. I agree with you totally, and I appreciate very much your being here, and I appreciate your good counsel, and we will count on that during the crafting of legislation, further hearings. There will be questions presented by other members of the committee. Senator Thurmond I know would like to leave the record open, Senator Kennedy, Senator Grassley, and Senator DeConcini. And it will be open for that purpose.

As I say, we are most appreciative of your testimony.

I think just one note of cautionary summary that, you know, we are now at the point again where we have done the research, and the reviews, and the white papers. I say again, it is not repetitive, it is just real that now we are in the jungle of politics, the political arena where the pressures from the constituents become everything, and when you get into that, a lot of marvelous arguments and carefully, carefully thought through decisions are just junked. And, you know, that is what we want to prevent because in the junking process somebody is going to get hurt. And we have always done that in our immigration laws; somebody has gotten hurt. And I just say to you that that is what we are trying very assiduously to avoid, and perhaps we can do that once in a long history of immigration law.

Thank you very much.

The hearing is concluded.

[Whereupon, at 4:53 o'clock p.m., the committee recessed subject to the call of the Chair.]

APPENDIX

1980 CHRONOLOGY OF EVENTS IN CUBAN/HAITIAN REFUGEE CRISIS

April 6	10,000 Cubans swarm into Peruvian Embassy in Havana
April 7	Cuban exiles in Miami demonstrate on behalf of Cubans in the Peruvian Embassy
April 12	Airlift of Cubans in the Peruvian Embassy from Havana to Costa Rica begins
April 14	U. S. agrees to admit 3,500 as refugees
April 17	Castro terminates airlift to Costa Rica
April 19	First boats leave Key West for Cuba to pick up refugees
April 20	Costa Rica offers to take all 10,000 Cubans in Embassy
April 21	Governor Graham's office announces that $500,000 in emergency federal assistance will go to Florida in response to continued influx of Haitians
April 22	Castro announces availability of Mariel as staging point for any Cuban wishing to leave the country
April 22	U. S. (State Department) announces entry by sea in a massive boatlift would be illegal
April 22	Dade County opens Tamiami Park as processing center for Cubans who have already begun to arrive en masse
April 24	Fascell meets with Ambassador Victor Palmieri on overall Cuban/Haitian situation
April 26	Palmieri takes inspection trip to Florida
April 26	Under Secretary of State Warren Christopher meets with Huber Matos and other Cuban exiles with no positive results
April 26	Governor Graham declares Dade and Monroe Counties to be in state of emergency
April 26	FEMA official (Tom Casey) arrives in Florida to coordinate federal refugee effort
April 27	Fascell speaks out on CBS News - says he supports reunification of families, but there is no way South Florida can absorb hundreds of thousands of prospective refugees by itself. Federal government must assume responsibility

April 29	Governor Graham asks federal help for new refugee influx
April 29	Presidential Assistant Gene Eidenberg arrives in Miami for first hand review of situation
April 29	INS District Director says some Cubans will be classed as economic--not political--refugees
April 30	Amb. Palmieri testifies before House Judiciary Committee. Says amount of supplemental funding that may be needed for refugees is not yet known. Says special legislation may be needed to resolve legal status of Mariel refugees. Now being granted 60-day parole with deferred inspection. Says present 3500 which U. S. originally agreed to accept remains in effect, but that no boats will be turned away and no one will be returned to a country where he/she may be faced with prosecution.
May 1	White House/FEMA briefing for Florida delegation staff. Says Cubans being considered as applicants for asylum rather than refugees in the classic sense. Gives assurances that there will be no problems over funding.
May 1	Announcement made that Eglin Air Force Base will open as a processing center for Cubans
May 2	Eidenberg announces that Refugee Act of 1980 precludes handing out of checks or Medicaid benefits. Only CETA funds and food stamps will be allowed.
May 2	White House announces that Jack Watson will be coordinating policy with Palmieri
May 2	Fascell, Pepper, Lehman and Mica meet to coordinate plans for forcing more comprehensive White House action. Seek meeting with President Carter at Camp David, but are refused.
May 3	U. S. Interests section in Havana under seige by almost 400 Cubans seeking entry into the U. S.
May 4	Flow of refugees hits 3,000 per day
May 5	President Carter, in a speech before the League of Women Voters, says the Cubans would be welcomed with "an open heart and open arms."
May 6	Florida Congressional delegation meets with President Carter to express numerous concerns; President issues a Declaration of Emergency effective May 1 and approves $10 million in federal funds to reimburse voluntary agencies for processing and resettlement
May 6	USDA announces Haitians are eligible for food stamps
May 6	Foreign flag freighter Dr. Daniels seized and $436,000 fine imposed
May 7	Announcement that Fort Chaffee, Arkansas, will be opened as a second processing center for Cubans
May 7	400 U. S. Marines sent to Key West to help maintain order and provide logistical support for processing Cuban arrivals
May 8	Fascell meets with Frank Moore of White House

May 8	San Jose Conference of 22 countries and 7 international organizations calls for all governments and relief organizations to accept Cuban refugees as an international responsibility.
	U. S. delegation proposes that an international delegation be appointed to meet with Castro and seek to control the flow of refugees under safe conditions
May 9	Fascell goes to Miami; meets with Dade County Coordinating Council and says that giving Cubans and Haitians refugee status will not solve the problem. We still must have legislation authorizing and appropriating the money
May 9	Eglin AFB filled to capacity (9,700)
May 10	Fascell goes to Key West to inspect processing of Cuban arrivals
May 12	Fascell meets with Chiles, Stone, Lehman and Pepper; announces he is pleased with opening of additional processing centers outside Florida (Bainbridge, Md. and Indiantown Gap). (Bainbridge never did open due to opposition from Congressman Long).
May 13-14	House Judiciary Committee hearings; Holtzman and McClory maintain influx is not "refugees"
	Miami Herald calls for ending the boatlift
	Serious sanitation problems develop at the Orange Bowl
	First Haitians placed in Orange Bowl
	Krome Avenue site opened for Haitian women
	Fascell, Chiles, Stone, Lehman, Pepper are briefed by State Department on San Jose Conference. Fascell asks for clear guidance for shrimp boat owners
	Coast Guard warns against boats travelling to Cuba because of bad weather and anti-American demonstrations
May 14	Fascell meets again at White House with President and aides
May 15	President Carter calls on Castro to end boatlift and to normalize process for those who want to leave Cuba to do so. Orders the Coast Guard to intercept boats leaving South Florida for Cuba.
	Arrivals continue at 5,000 per day
May 19	Fort Chaffee filled to capacity (18, 972)
	Indiantown Gap opens as a processing center
May 19	Castro responds to President Carter's call for an orderly flow of refugees by saying any U. S.-Cuban talks must cover all bilateral issues
May 20	White House says owners of boats used to transport refugees will be prosecuted
May 20	Announcement that Fort McCoy, Wisconsin will open as a processing center

May 22	Cuba rejects offer by U. S., Great Britian and Costa Rica to negotiate an international solution to the Cuban refugee problem
May 28	Orange Bowl closed to refugees. Opa Locka Center opens for processing.
May 28	Fort McCoy opens
May 29	Fascell writes to President urging policy decision on boats used in boatlift and release of boats so they can be used for fishing until final decisions are made
May 29	Fort Indiantown Gap filled to capacity (18,311)
June 1-30	Total Cuban arrivals: 114,943; Total Haitians: 2,267
June 1	Cubans riot at Fort Chaffee
June 3	Fascell writes to INS Commissioner urging that prodedures for hearing on boats be established immediately.
June 4	Fascell meets with officials at White House; announces he has authored legislation to ensure federal reimbursement to state and local governments for social services proceded to refugees. (Amendment to Foreign Aid Authorization bill authorizes $200 million)
June 7	President Carter says criminals should be deported and urges Castro to take them back
June 13	Law suit filed in federal court in behalf of boat owners
June 16	News begins to indicate that sponsorships are failing
June 16	Fort McCoy filled to capacity (13,258)
June 17	Senate approves Fascell/Stone Amendment to Foreign Aid authorization bill
June 19	Orange Bowl opened as site for those with sponsorship breakdowns. Initially, 150 Cubans are relocated there but within 72 hours, there are 800.
June 19	Lehman amendment to Appropriations bill passes. Provides funding under Fascell/Stone program
June 20	Palmieri announces that Cubans who arrived in U. S. between April 21-June 19, 1980, and all Haitians who are in INS proceedings as of June 19, 1980 will be paroled indefinitely into the country as Cuban/Haitian entrants (Status Pending)
June 23	Fascell meets with Frank Moss and Terry Straub
June 23	78 boat owners indicted.
July 1-31	Total Cuban arrivals: 117,572; Total Haitians: 4,670
July 2	Fascell meets with John White and Terry Straub
July 2	U. S. advises Cuba that 65 Cuban citizens who came from Mariel wish to return to Cuba
July 2	Federal District Judge James King orders that INS take no further action against 4,000 Haitians who filed a class action suit until U. S. can show acceptable plan for reconsidering asylum claims

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July 2	Supplemental Appropriations and Rescissions Act of 1980 passes Congress. Includes $345 million for services and assistance to Cuban and Haitian arrivals. Also includes $100 million to reimburse state and local governments
July 8	Key West delegation meets with Gene Eidenberg in Fascell's office to urge action on boat cases
July 15	State Department Cuban-Haitian Task Froce assumes responsibility for Cuban resettlement camp operations
July 23	Fascell, Pepper, and Lehman meet to discuss funding legislation
July 23	Construction begins on "tent city" site for homeless, sponsorless refugees as Orange Bowl prepares to close refugee operations in preparation for football season
July 25	Tent City opens; within 48 hours, population is 850 - 950
July 29	Foreign Aid Appropriation bill reported by House Committee; contains $65 million budget amendment to provide $35 million for resettlement and $30 million for continued operation of processing centers
July 29	Fascell, Pepper and Lehman meet on refugee situation
July 30	Administration submits Cuban-Haitian Entrant Act of 1980 to Congress. Calls for special Cuban-Haitian Entrant Status; definition of services and benefits to arrivals; specifies criteria for federal reimbursement to States
August 1-31	Total Cuban arrivals: 121,511; Total Haitians: 5,790
August 5	Eidenberg announces plan to consolidate all resettlement activities at Fort Chaffee
August 7	President signs Presidential Determination to increase the amount of ERMA funds available to $20 million and says money is to be used for those Cubans and Haitians applying for political asylum
August 13	Administration makes $16.8 million available to Miami/Dade County for additional support to health and educational systems
August 17	U. S. tells Cubans that it is long-recognized principle of international law that a State has a duty to receive back its own nationals and proposes conversations on an urgent basis to provide a mechanism for identification and repatriation
August 1-18	A spate of hijackings occurs by Cubans who wish to return to Cuba. U. S. in discussions with Cuban government
August 18	Refugee Education Assistance Act of FY 81 (Stack bill) passes the House
August 20	Fascell sends another letter to INS urging action on boat cases
August 21	Labor-HHS Appropriation bill reported by House committee. There is no money for Cuban/Haitian Entrant program, but

	at insistance of Fascell and other Dade Members, langauge is included which recognizes the general need for more assistance to state and local governments and expresses a willingness to review specific needs for more funds as developments warrant
August 25	Fascell meets with Frank Moore, Gene Eidenberg, and Amb. Palmieri
August 27	Breakfast at White House
September 1-30	Total Cuban arrivals: 124,769; Total Haitians: 7,785
September 3	Fascell and other members of Florida congressional delegation meet with Dade County Coordinating Council in Washington
September 3	INS establishes guidelines for dealing with boat cases
September 4	Cuban/Haitian Task Force announces administration's policy regarding Cuban/Haitian arrivals
September 15	Senate Education Subcommittee adopts amendment offered by Senator Williams which incorporates Fascell/Stone language into the Stack bill
September 17	Fascell, Pepper and Lehman meet with Miami Beach commissioners
September 18	Administration announces its official support for both the Stack bill and the Fascell/Stone language
September 23	Stack bill (with Fascell/Stone amendment) reported by full Senate Labor and Human Resources Committee
September 23	Cuban-Haitian Task Force announces that Fort Allen, Puerto Rico, will be opened as new reception center for Cuban and Haitian refugees
September 25	Stack bill (with Fascell/Stone amendment) passes Senate
September 26	Castro closes Mariel Harbor and orders all boats awaiting passengers to depart
September 26	Eglin closes; its residents are moved to Ft. Chaffee
September 27	Ft. McCoy closes; its residents are moved to Ft. Chaffee
September 30	Tent City in Miami is closed
September 30	Stack bill (with Fascell/Stone amendment) is considered by the House under suspension. Consideration is delayed as House Appropriations Committee makes technical objection
September 30	After discussion with Fascell, Chiles introduces, and Senate approves, a bill which repeals the objectionable clause
October 1-31	Total Cuban arrivals: 124,779; Total Haitians: 10,211
October 1	House approves both the Stack bill and the Senate bill repealing the objectionable clause by voice vote under suspension and sends measure to the President.

October 1	Puerto Rico's Environmental Control Board issues "cease and desist" order to block use of Ft. Allen
October 1	1981 Continuing Appropriations bill passes Congress. Contains $65 million budget amendment for refugee resettlement and camp operations
October 3	President issues executive order exempting Ft. Allen from local pollution control requirements in order to facilitate opening of Ft. Allen
October 8	Federal judge issues restraining order enjoining U. S. from opening Ft. Allen
October 9	Indiantown Gap is closed
October 10	President Carter signs Stack bill (with Fascell/Stone amendment) in Tallahassee
October 10	Palmieri (in letter to Zablocki) advises that President has authorized a drawdown from the U. S. Emergency Refugee and Migration Assistance Fund for Cuban and Haitian refugees
October 10	Krome North to be 24-hour "turn-around" site
October 13	Cuba announces that it will release all Americans being held in jail in Cuba
October 14	Justice Department appeals ruling on Ft. Allen
October 20	Fascell sends another letter to Justice Department urging speedy action on boat cases, along with consideration on "case-by-case" basis, taking into account extenuating circumstances in some instances
October 21	President announces that all those who arrived between June 20 - October 10 will be given Cuban-Haitian Entrant status. This covered approximately 11,000 Cubans and 5,500 Haitians
October 22	Appeals Court overrules Puerto Rican judge's decision against use of Ft. Allen
October 22	Bahamian government announces that Haitians in that country will be given 12 weeks in which to leave or face deportation.
October 23-31	Key West Redevelopment Agency learns that INS has called a meeting to discuss using portion of Truman Annex property for possible reception site should boatlift resume. Fascell contacts INS and White House and meeting is cancelled.
November 1-30	Total Cuban arrivals: 124,779; Total Haitians: 10,981
November 4	Ronald Reagan elected President
November 10	Fascell again contacts INS and White House regarding delays in hearings on boat cases
November 10	Fascell discusses need for assistance to Cuban/Haitian entrants to be provided in Second Budget Resolution with Chairman Giaimo and Bill Nelson, of Budget Committee

November 13	12 judges, sitting en banc, hear criminal boat cases in Miami
November 13	House Budget Committee reports Second Budget Resolution; contains language that nothing in it is inconsistent with complete funding for all the needs of all refugees.
November 15	Cuban-Haitian Task Force formally transferred from State Department to Department of Health and Human Services
November 17	OMB indicates intention to offer FY 1981 budget amendments totalling $263 million with respect to Cubans and Haitians. Fascell initiates efforts to have this formally submitted to House Appropriations Committee
November 18-20	Congress passes Second Budget Resolution including langauge for refugee programs
November 19	Fascell meets in his office with Acting INS Commissioner David Crosland for 1 1/2 hours reviewing all aspects of refugee problems
November 20	Administration's budget amendment formally submitted to House Appropriations Committee
November 26	Decision made to have Krome North be a "permanent" refugee processing center with concrete barracks and built-in sanitation facilities
December 1-31	Total Cuban arrivals: 124,786; Total Haitians: 11,525
December 3	House passes Further Continuing Appropriations for FY 1981 with all of administration's budget amendment except $15 million for education under the Stack bill
December 4	Justice Department drops criminal charges against 71 people involved in the "Red Diamond" boat case
December 5	Briefing by State Department for delegation on Haitians in Bahamas
December 8	Decision made to send Haitians to Ft. Allen
December 8	Fascell puts together delegation meeting with INS Commissioner to urge action to take all refugees accused of crimes in Dade County into federal custody and off the streets
December 9	INS agrees to assume responsibility for all refugees picked up by local law enforcement authorities for misdemeanors
December 9	Court orders 30-day restraining order on use of Ft. Allen
December 10	Florida delegation calls for federal government to find another place to hold sponsorless, homeless refugees until status of Ft. Allen is determined
December 11	Task Force team leaves to inspect four non-Florida sites for possible replacement of Ft. Allen
December 11-16	Final action is reached on Further Continuing Appropriations for FY 1981. Funding for education is not included.

December 12	Tents to go up at Krome South to handle overflow from Krome North
December 15	President signs executive order directing Census Bureau to count Cubans and Haitians in official 1980 Census
December 18	Court of Appeals rules against allowing Ft. Allen to open
December 19	Federal Court rules en banc to acquit boat captains to criminal charges

1981

January 1-31	Total Cuban Arrivals: 124,789; Total Haitians: 12,229
January 7	Congressional delegation staff meets with new Cuban-Haitian Task Force director, Bill Forbush. Task Force is in a holding pattern until new administration takes over
January 9	U. S. agrees to provide $3.8 million to Florida for extraordinary law enforcement expenses incurred as a result of refugees
January 15	President Carter's FY 1982 budget requests $115 million in new budget authority for Cuban-Haitian entrant assistance. Breakdown: $73 million for cash/medical/social services. $15 million for education. $27 million for processing/resettlement costs.
January 18	Bahamian deadline for Haitians there illegally to leave
January 20	Ronald Reagan inaugurated President of the United States
January 21	Fascell writes letter to Reagan urging him to give South Florida's refugee problems his top priority attention
January 22	Fascell writes new HHS Secretary Schweiker urging top priority attention to refugees
January 28	As a result of a favorable Court decision, INS directs its District Office in Miami to begin exclusion proceedings against 3900 Haitians who arrive after October 11, 1980
January 28	Fascell writes to new Attorney General and Secretary of State urging top priority attention to refugees
February 1-28	Total Cuban arrivals: 124,789; Total Haitians: 12,560
February 4	Fascell sets up delegation meeting to discuss strategy on refugee situation
February 6	Fascell, Pepper, Lehman and Chiles urge OMB not to freeze hiring at INS and Customs
February 9	Bahamians arrest 300-400 Haitians
March 1-31	Total Cuban arrivals: 124,789; Total Haitians: 13,170
March 1	Select Commission on Immigration and Refugee Policy issues its final report

March 4	Fascell sends a second letter to President Reagan, having received no response to his letter of January 21
March 6	Fascell receives non-commital reply from HHS Secretary Schweiker
March 9	Fascell receives response from State Department which indicates they are working with the Bahamians to prevent mass exodus of Haitians from Bahamas to South Florida
March 10	Reagan revisions to FY 1982 budget are announced. $15 million in educational assistance budget authority is dropped from Carter's recommendations. This would leave $73 million for social and other servides and $27 million for processing and resettlement costs. Old Cuban Refugee Program is to be terminated as of October 1, 1981.
March 18	Response from Attorney General advising that an Inter-Agency task Force has been set up to study refugee problems and is scheduled to report its recommendations to the President by May 4, 1981
March 27	Fascell receives response to his letter to the President saying it has been referred to the National Security Council
April 1-30	Total Cuban arrivals: 124,789; Total Haitians: 13,677
April 1	Congressional delegation staff meets with representatives from the Inter-Agency Task Force at the Justice Department to provide Florida's input into the problems associated with the Cuban-Haitian entrants
April 2	Fascell receives response from OMB saying hiring freeze for INS and Customs will remain in effect
April 2	City of Miami estimates there are 2600 sponsorless, jobless, homeless Cuban refugees roaming the streets of Miami
April 9	Fascell, Pepper, Lehman and Chiles urge Attorney General to provide additional personnel to INS in South Florida
April 10	Fascell writes to Director of Cuban-Haitian Task Force urging release of the hold on federal surplus property in South Florida, and particularly, Richmond Naval Air Base
April 29	Court rules that 39 Cubans who entered Miami illegally from Spain must be deported
April 30	Hearings held by Subcommittee on Elementary, Secondary and Vocational Education of House Education and Labor Committee on H. R. 3076, a bill to consolidate various refugee education programs into a single program
May 1-31	Total Cuban arrivals: 124,789; Total Haitians: 14,446
May 1	Fascell writes to Congressman Goodling, main sponsor of H. R. 3076, urging him to support inclusion of a set-aside provision in that legislation so that areas such as Dade

County that have borne the brunt of refugee entries will be sure to get a large share of appropriated funds.

May 6 — Governor Graham testifies on new Immigration legislation

May 6 — Fascell co-authors (with Dan Mica) an amendment to the Foreign Aid Bill which conditions U. S. aid to Haiti on the Haitian government's taking positive action to halt illegal emigration from Haiti

May 20 — In 3 months, only 3 Haitians have been returned to Haiti as a result of the exclusion hearings. Today, INS decides to hold hearings for newest arrivals being held at Krome North, rather than those who have already been released into the community.

May 21 — Senate passes H. R. 3512, Supplemental Appropriations and Rescissions Act for 1981, with $6 million in budget authority for Cuban-Haitian educational assistance to schools.

May 23 — Concrete barracks at Krome North completed and Haitians are moved in from tents

June 1-28 — Total Cuban arrivals: 124,789; Total Haitians: 15,830

June 3 — Conference report to Supplemental Appropriations bill for 1981 contains Senate lanaguage adding $6 million for refugee educational assistance. Bill is enacted June 5.

June 3 — Fascell writes to Director of ORR urging the release of Krome South

June 10 — Fascell testifies before Labor-HHS Appropriations Subcommittee in support of $88 million for Cuban-Haitian programs, with $73 million in cash/medical/social services and $15 million for education in FY 82.

June 4 — 11 Haitians found "excludable" and returned to Haiti under "speeded up" INS hearings

June 9 — Attorney General orders INS to open Haitians' hearings to public and to permit legal representation

June 11 — Court enjoins INS from deporting 76 Haitians found to be excludable on grounds that their rights may have been violated.

June 17 — Senate Budget Commmittee orders reported S. 1377, FY 1982 Budget Reconciliation bill. Limits FY '82 Cuban-Haitian Assistance to $35 million

June 19 — House Budget Committee orders reported H. R. 3982, Omnibus Reconciliation Act of 1981. Limits funding for Cuban-Haitian assistance to $50 million for FY 82

June 23 — House Report on Reconciliation Act is released and exempts cash/medical/social services for Cuban-Haitians from spending limitation.

June 23 — INS "mistakenly" releases 100 Haitians in Miami at midnight

June 24 — Fascell is advised by ORR that it has no intention of using Richmond Air Base for a refugee processing center and has released its hold on the property

June 24 — INS identifies two sites in California and Texas as most suitable for alternate processing center

June 25 — Senate adopts 1982 Budget Reconciliation Act with Thurmond amendment which adds $59 million in budget authority for Cuban-Haitian Assistance, making a total of $94 million in FY '82 and $59 million in FY '83. At least $6 million is earmarked for educational assistance in FY '82.

June 26 — Florida congressional delegation meets with Acting INS Commissioner and Justice Depratment Representatives and urge that 1) flow be stopped; 2) alternate site for Krome North outside Florida be selected; 3) that Krome South not be opened

June 26 — INS starts releasing Haitians from Krome North in large numbers as severe overcrowding occurs as result of continued massive influx

June 27 — House passes Budget Reconciliation bill. Combines all existing educational assistance programs into a single program and authorizes "such sums as are necessary."

July 2 — Fascell meets with Haitian advocates in Miami; promises to insist on equal and humane treatment

July 6 — INS announces it will hold new hearings for 85 Haitians found to be excludable and will ensure that all rights are complied with

July 7 — As a result of outbreak of dengue feaver in Caribbean, all new arrivals will be held in Krome North for 10 days quarantine period

July 10 — All remaining children at Krome South are sent to New York and Krome South is closed

July 10 — State of Florida threatens to sue fedeal government over lack of action in finding solution to refugee problem

July 10 — Fascell contacts House conferees on Budget Reconciliation and urges them to accept Senate levels of refugee funding

July 15 — Justice Department extends Cuban-Haitian Entrant (Status Pending) status for pre-October 10, 1980 arrivals indefinitely

July 15 — Fascell blasts Reagan administration for failure to act

July 15 — House passes legialtion to permit military to assist civilian law enforcement agencies in drug interdiction and illegal alien interdiction. Fascell votes for measure.

July 17 — State of Florida announces it will sue U. S. government; Fascell, Pepper, Lehman and Chiles support decision and criticize administration

July 22 — U. S. government and Puerto Rico enter into consent agreement to permit use of Ft. Allen to house 800 of overflow from Krome North immediately and, if necessary, up to 1500

STATE OF FLORIDA
Office of the Governor
THE CAPITOL
TALLAHASSEE 32301

BOB GRAHAM
GOVERNOR

July 15, 1981

Honorable William French Smith
United States Attorney General
United States Department of Justice
Tenth and Constitution, N.W.
Washington, D.C. 20530

Dear Mr. Attorney General:

An emergency situation exists at the Krome North facility for Haitian entrants in Dade County, Florida. The current population is in excess of 1,600. An unknown number of additional Haitian refugees is expected within 24 hours. The water and sewer systems are not functioning, creating extremely unsanitary conditions and a public health hazard to the Haitian population and staff within the Krome Center, as well as the general South Florida community.

In my letter of April 17, 1981 to Vice President Bush, I pointed out the existing and potential refugee and immigration crisis facing Florida. In Vice President Bush's response to me of June 4, 1981, he indicated that such emergencies fell within your responsibility as Chairman of the Cabinet level task force proposing a national policy for immigrants and refugees. On behalf of the State of Florida, I respectfully insist that the specific actions enumerated in the attachment to this letter be taken immediately.

Unless I receive a response by 10:00 a.m., July 16, 1981, agreeing to implement the actions enumerated in the attachment to this letter, I will be forced to institute appropriate legal action. I hope that such action is not necessary; however, failure to implement these actions vital to the public health and safety will leave the State of Florida no other alternative.

Sincerely,

Bob Graham

Governor

Attachment

BG/pc

Honorable William French Smith
Attachment
July 15, 1981

RE: Krome Emergency Situation

1. No later than noon, July 17, the water, sewer and related health infrastructures shall meet Dade County and State of Florida health standards.

2. No later than 3 p.m., July 16, a plan shall be submitted to the Dade County Health Department for the transfer of entrants from Krome North to a facility or facilities outside the State of Florida in order to reduce the population to the emergency design capacity of 869 by noon, July 21. Such plan shall provide for a reduction to the design capacity of 524 by noon, July 24.

3. There shall be no releases from the Krome facility into Florida except those involving family reunifications involving immediate families as defined by INS, (father, mother, sister, brother). These resettlements shall be handled by voluntary agencies and in accordance with the agreement to screen arrivals for 10 days for surveillance of dengue fever.

4. No additional resettlement or processing facilities shall be established in the State of Florida.

5. All entrants shall continue to be screened and meet health standards, as required by the agreed medical protocol.

6. The U.S. Coast Guard shall share relevant information on potential arrivals with the State of Florida and increase its coastal surveillance. The appropriate federal agency shall assume responsibility for custody and disposal of boats.

IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF FLORIDA

Civil Division

BOB GRAHAM, Governor of the State of Florida, et al., Plaintiffs, v. WILLIAM FRENCH SMITH, individually and in his official capacity as Attorney General of the United States, et al., Defendants.	No. 81-1497-Civ. JE

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF PLAINTIFFS' MOTION
FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

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MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF PLAINTIFFS' MOTION
FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

This lawsuit and the instant motion arise out of the intolerable situation in the South Florida area created by the recent and ongoing immigration to the United States of many thousands of aliens, primarily Haitian citizens. The aid of this Court is urgently required to compel the Federal Government to alleviate shocking conditions at the Krome North Refugee Camp, to protect the health and safety of the citizens of Florida and to alleviate the burdensome displacement of State governmental operations caused by Defendants' immigration policies and practices.

STATEMENT OF FACTS

The Krome North facility is egregiously overcrowded (Exhibit A, Appendix B); it has inadequate sewage treatment and water supply (Exhibits B, C and D); its medical screening procedures are deplorable, allowing carriers of dangerous diseases to intermingle with other detainees (Exhibit E); and it constitutes

a severe fire hazard due to overcrowding of structures and tents. The conditions at Krome North have an impact far beyond the facility's boundaries. The Biscayne Aquifer, which is highly significant to the fresh-water supply of South Florida, is being contaminated by Krome North's inadequate waste disposal system (Exhibits B and C; see also, 44 Fed. Reg. 58797, October 11, 1979). Krome North detainees are being released, indeed "dumped," by Defendants into Florida communities without proper medical screening, thereby creating a grave risk of a public health disaster (Exhibit E). Even when screening procedures are nominally followed, Krome North detainees are indiscriminantly released without the prospect of employment and without sponsorship in the community (Exhibit F).

These Haitian immigrants, together with thousands of Haitian immigrants who, due to the inadequacy of Defendants' immigration procedures, are not taken into custody for screening at Krome North (or other facility), congregate largely in an area of Miami known as "Little Haiti." The resulting overcrowded and squalid conditions in Little Haiti have created a severe public health hazard (Exhibits B and G). Despite maximum efforts by the Dade County Department of Public Health, the unsanitary conditions and improper garbage disposal in Little Haiti have led to extensive rat infestation (Exhibit G). The influx of unscreened and improperly screened Haitians has substantially increased the potential for tuberculosis in the Dade County area (Exhibit E). In addition to imminent health hazards, the concentration of immigrants in the State of Florida has overtaxed public services in areas of hospital, health care, employment, housing, education, police, correctional and other state governmental functions.

During 1980, at the same time that over 125,000 Cuban immigrants were arriving by boat on the South Florida coast, a more steady, constant flow of Haitians was also arriving on the

same shores. Because large numbers of these aliens evaded custody by Federal authorities, it is impossible to determine with precision the total number of Haitians that have landed in Florida, but approximately 25,000 were confirmed for 1980. The vast majority of both Cuban and Haitian arrivals has remained in Florida, where they currently reside. Although the flow of Cuban arrivals has virtually ended, significant numbers of Haitians continue to arrive each day (Exhibit A, Appendix B).

The legal status of the Cuban and Haitian arrivals has never been clarified by legislation. The Federal Government, however, has pursued a policy of "resettling" those immigrants in this country. Even with respect to post-October 10, 1980 entrants who were not granted Cuban-Haitian entrant status[1/] and are deemed excludable, "resettlements" have been undertaken. This "resettlement" consists primarily of the release of the immigrants as soon as possible with insufficient background checks, physical examinations and investigations of proposed sponsorships. The remaining Haitian arrivals who have been taken into custody are housed at the Krome North facility. This facility, which was designed for a capacity of 524 persons, as recently as July 11, 1981 housed over 1,400 aliens (Exhibit A, Appendix B).

As admitted by Defendant Meissner, the severe overcrowding at Krome North has led to a breakdown of the sewage system which has caused raw sewage to be emitted into the drain field outside the camp (Exhibit A, Appendix B). On July 15, 1981 the overloaded sewer system collapsed, rendering all flush toilets inoperative and requiring that water be trucked into the facility (Exhibits B, C and D). The sewage problem, and the immediate

---

1/ Initially, Cuban-Haitian immigrants were accorded a previously unknown status: "Cuban-Haitian entrants (status pending)." However, those aliens arriving after October 10, 1980 were not granted that status, and Defendants have determined that these aliens are presumptively excludable.

threat it presents to the Biscayne Aquifer, is not the only serious public health hazard existing at Krome North. Notwithstanding the high incidence of communicable diseases such as tuberculosis among Haitian entrants, new arrivals at Krome North are permitted to mingle with detainees who have been medically screened, thereby vitiating the effect of any screening (Exhibit E). Hundreds of detainees are housed in tents that are not equipped with mosquito netting or screening (Id.). This fact presents a high potential for the spread of malaria, dengue fever and yellow fever, which is exacerbated by standing pools of stagnant water on the site (Exhibits B and E). The deplorable conditions in the camp are also conducive to typhoid fever, shigella, dysentery, giardiasis, and hepatitis (Exhibit E).

The conditions of overcrowding at Krome North, coupled with stepped-up arrivals of Haitians on Florida beaches, has created enormous pressures to summarily release aliens into Florida communities. As a result, Haitians are dispersed without sponsors meeting federally mandated guidelines, without employment and totally lacking in English language skills, housing or other necessaries. In some cases, Krome North officials have abandoned even the pretense of a screening and have literally "dumped" Haitians into South Florida. As set forth in the Affidavit of Samuel Constant (Exhibit F), on June 23, 1981 over 100 Haitians were bused at nighttime to a Biscayne Boulevard parking lot where they were abandoned.

Inhuman treatment of Haitian entrants has led to severe adverse impacts on the quality of life in the State of Florida. The quality of the area's water supply is in imminent danger because of contamination by sewage from the Krome North treatment facility (Exhibits B and C). Enforcement of health and environmental laws has been disrupted. The tourist-based economy of the area has been damaged. A serious shortage of rental housing has been created, with the vacancy rate in Dade County

having been reduced to five-tenths of one percent (Exhibit H). The public school system has been overburdened resulting in a decrease in the quality of education for both the children of immigrants and other children in the school system (Id.). The active unemployment rate in Dade County has more than doubled to 13% (Id.). The public health and hospital system has been strained to the breaking point (Exhibit I).

Defendants do not deny the existence of Florida's problems and their severity, nor do they deny that this is a national problem of which the State of Florida is bearing a disproportionate burden. As Defendant William French Smith stated on June 27, 1981 (Exhibit J):

> [The federal] government ... has also failed to adopt a coherent, realistic, and effective policy to deal with the influx of immigrants and refugees.
>
> Nowhere is the loss of control more apparent than in Florida. We cannot allow a repeat of our experiences with the Mariel boatlift. The fiasco brought 130,000 people to the shores of South Florida -- and left about 100,000 in the Miami area. In addition to the many Haitians who have arrived here in recent years, not even this great State can absorb large numbers of new arrivals. And our society cannot much longer countenance the dislocations, sometimes invisible, that result from the swelling onslaught of illegal aliens.
>
> * * *
>
> Immigration is a matter of national policy. Neither Florida nor any other state or region should bear an avoidably disproportionate burden in dealing with either immigrants or refugees. (emphasis added).

Further, Defendant Doris M. Meissner stated on July 13, 1981 (Exhibit A, Appendix B):

> Recently a critical need has developed to immediately open [another existing facility] to alleviate the overcrowded condition of the Krome North facility, and to provide an additional temporary holding facility while an appropriate permanent facility is being found and prepared.

* * * *

> In view of the overcrowding and unsanitary conditions developing at Krome North, the INS needs to be able to transfer up to 2,000 Haitians to [another facility].
>
> * * *
>
> Continued use of Krome North will adversely affect the surrounding community, the Haitians themselves, and the government's ability to deal with this serious problem. (Emphasis added.)

Transfer of Krome North detainees, at least those in excess of the facility's design capacity, to an immigration detention facility outside Florida is a necessary, immediate step. Equally required, as discussed above and in the attached Exhibits, is an immediate prohibition against further release of Cuban-Haitian entrants into the State of Florida, except those involving bona fide close family reunifications.

Plaintiffs have exhausted all possible avenues of relief for these manifold problems, and therefore are forced to seek the aid of this Court. Plaintiffs have worked extensively with the Federal Government in efforts to achieve a satisfactory solution to the national immigration problems that are being improperly thrust solely upon the State of Florida. These efforts, unhappily, have not produced results.

On April 17, 1981 Governor Bob Graham wrote the Vice-President, George Bush, in his capacity as crisis coordinator for foreign affairs, seeking the Vice-President's assistance in alleviating the problems caused by concentrating immigrants in the State of Florida (Exhibit K). On June 4, 1981 the Vice-President responded, stating that the President has asked the Attorney General to chair a cabinet level task force to develop a national policy for immigration and refugees (Exhibit L). By mid-July of 1981,

no solution to the problem was forthcoming from the Federal Government and, in the meantime, the population of the Krome North facility had swelled to approximately 1,600 -- more than triple its design capacity. On July 15, 1981, Governor Graham wrote to the Attorney General insisting that immediate action be taken to alleviate the serious situation at Krome North (Exhibit M). The attachment to that letter sets forth the immediate action which, Plaintiffs maintain, is necessary to properly resolve the problems. Further discussions were held between Governor Graham, the Attorney General and other officials of the Department of Justice, but it became clear by the afternoon of July 17, 1981 that the Federal Government's response was wholly inadequate. Therefore, the instant suit was filed.

PLAINTIFFS ARE ENTITLED TO A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

The foregoing Statement of Facts sets forth the intolerable situation faced by detainees at the Krome North Facility, as well as residents of the State of Florida, compelling Plaintiffs to seek the extraordinary relief of a Temporary Restraining Order and a Preliminary Injunction. In this Circuit, Courts are to apply the following factors in exercising discretion to grant such relief:

1) a substantial likelihood that plaintiff will prevail on the merits;
2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted;
3) the threatened injury to plaintiff outweighs any threatened harm the requested injunction may do to defendant, and
4) granting injunctive relief will not disserve the public interest.

Morgan v. Fletcher, 518 F.2d 236 (5th Cir. 1975); Canal Authority of the State of Florida v. Callaway, 489 F.2d 567 (5th Cir. 1974); Allison v. Froehlke, 470 F.2d 1123 (5th Cir. 1972). In addition, as stated by the Court in Canal Authority, supra, "the focus always must be on prevention of injury by a proper order, not merely on preservation of the status quo" 489 F.2d at 576.

Likelihood of prevailing on the merits -- As set forth in detail below, Plaintiffs have numerous meritorious legal claims, all of which present more than a "likelihood" of ultimate success on the merits. This factor, therefore, militates strongly toward granting the requested relief.

Irreparable Injury -- It is clear beyond any reasonable doubt that the State of Florida and the detainees at the Krome North facility are suffering continuing irreparable injury on a daily basis. Indeed, the Federal Government has admitted in papers filed on July 13, 1981 with the United States Court of Appeals for the First Circuit that continued detention of immigrants at Krome North "is causing irreparable injury daily to the government, to the community surrounding Krome North, and to the residents of that overcrowded facility" (Exhibit A, pp. 6-7).

Injury to Plaintiff outweighs harm to Defendant -- Because the Federal Government has admitted that is suffering irreparable injury by continuing to use Krome North as a detention facility (Id.), Defendants cannot possibly point to any potential harm to themselves that even approaches the irreparable harm being suffered by the State of Florida and the detainees at Krome North.

Granting the injunction will not disserve the public interest -- It is inconceivable that the alleviation of deplorable conditions at Krome North and the surrounding community could disserve the public interest.

Considering the above-summarized factors in light of the egregious situation at Krome North and the impact it is having on the State of Florida leads to the conclusion that the relief requested by Plaintiffs is not only appropriate, it is absolutely and immediately required.

ARGUMENT

I. DEFENDANTS HAVE VIOLATED THE ADMINISTRATIVE PROCEDURE ACT AND THE IMMIGRATION AND NATURALIZATION ACT.

The validity of actions taken by Defendants, purportedly pursuant to the Immigration and Naturalization Act ("INA") are subject to review by this Court. Indeed, the Fifth Circuit has expressly stated that:

> Taken together, the effect of the Administrative Procedure Act and the Immigration Act is to make available judicial review of agency action relating to immigration by suits for a declaratory judgment and for mandatory and prohibitory injunctions...

Estrada v. Ahrens, 296 F.2d 690, 694-695 (5th Cir. 1961)[2/]

As illustrated in detail below, in the instant case Defendants have acted in an arbitrary and capricious manner and in contravention of law, in violation of the APA, through their exercise of the power of parole in an invalid manner and through their provision of inadequate facilities for the medical examination of potentially excludable

2/ The Estrada court based its jurisdiction upon §10 of the APA. The Supreme Court has subsequently held that the APA does not provide an independent basis for jurisdiction. Califano v. Sanders, 430 U.S. 99, 105 (1977). This holding does not mean that this Court lacks jurisdiction, however, since the Califano court went on to state that:

> The obvious effect of this modification [eliminating the amount of controversy requirement from §1331 in suits against a government agency], subject only to preclusion-of-review statutes created or retained by Congress, is to confer jurisdiction on federal courts to review agency action, regardless of whether the APA of its own force may serve as a jurisdictional predicate." Id.

aliens.

When the massive influx of Cuban-Haitians commenced in May of 1980, a small number were initially awarded refugee status. The vast majority, however were accorded a previously unknown status known as "Cuban-Haitian entrants (status pending)." Legislation regularizing the status of these "Cuban-Haitian entrants" was proposed but was never enacted.

This status was administratively continued by Defendant Smith's predecessor on December 29, 1980 for an additional six months beyond January 15, 1980. Although Defendant Smith's predecessor expressed doubts concerning the validity of any additional extensions, Defendant Smith nonetheless again extended this status on July 14, 1981. Moreover, this latest extension is for an indefinite period.

Although there seems to be no difference between those granted refugee status and those classified as "Cuban-Haitian entrants," the reason for this disparate treatment becomes clear when one examines the Refugee Act of 1980. Under that Act, the Attorney General's power to parole refugees was limited to situations in which "compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 1157 of this title." Refugee Act, § 202(f)(3); 8 U.S.C. 1182(d)(5)(B). Section 207, however, requires a showing that the admission of refugees above the annual allotment is justified by humanitarian concerns or is otherwise in the national interest and that Congress be provided with, inter alia,

> "(2) A description of the number and allocation of the refugees to be admitted....
>
> (3) A description of the proposed plans for their movement and resettlement and the estimated cost of

> their movement and resettlement.
> (4) An analysis of the anticipated social, economic and demographic impact of their admission to the United States...."

In addition to those classified as refugees and those classified as "Cuban-Haitian entrants," a third group of arrivals has been denied either of these statuses. This group consists predominantly of Haitians who have continued to arrive in large numbers since October 10, 1980. Defendants have determined that this last group is presumptively excludable, and the inhabitants of Krome North consist largely of individuals in this category.

Despite the most recent indefinite extension of this status, the ultimate fate of the "Cuban-Haitian entrants (status pending)" is presumably still under consideration by Defendant Smith. Defendants also presumably still intend to bring exclusion proceedings against post October 10, 1980 entrants. Defendants have nevertheless undertaken to "resettle" both groups in somewhat the same manner as refugees are resettled. However, there are a number of significant differences from past resettlement efforts. First, although Defendants stated in September of last year that, because of the burdens already placed upon Florida, they would make only "family reunification" resettlements within Florida, Defendants have failed to apply that concept. Under the INA, "immediate relatives" include only spouses, children and parents. 8 U.S.C. § 1151(a). Under one of the preference categories, the concept of relatives is extended to brothers and sisters. 8 U.S.C. § 1153(a)(5). Defendants, however, have permitted "family reunification resettlements" whenever someone asserts that he or she is a cousin (of whatever degree of relationship) of the detainee.

Defendants have failed to apply their own "family

reunification" policies because they have been unable to make resettlements outside of Florida and because they have been unwilling to transfer detainees from Krome to other facilities. As Defendant Hawkes stated on July 8, 1981 (Exhibit A, Appendix D):

> Due to the large influx of Cuban and Haitian aliens into Florida, and in order to avoid additional problems in burdening local communities as a result of a further concentration of newly arrived Caribbean immigrants in that State, the federal government has attempted to encourage Haitian resettlement outside Florida, but this resettlement has been greatly limited due to these reasons stated above.

The "reasons stated above" by Mr. Hawkes are, however, of Defendants' own making. He points out that post-October 10, 1980 Haitian entrants are subject to exclusion or deportation proceedings. They are given a parole for only 120 days. He states that "[p]otential sponsors and employers are reluctant to accept Haitians in either sponsorship or employment situations due to the temporary nature of their stay and their uncertain immigration status." Id. The total irrationality of Defendants' actions thus becomes apparent. Although they have determined to bring exclusion or deportation proceedings against post-October 10, 1980 entrants, they have also decided to try to "resettle" such entrants as though the entrants had been classified as refugees. Such resettlements are impossible, however, because of the limited period of parole granted.

The result of such irrational conduct is the current intolerable situation at Krome North, the refusal to observe the "family reunification" principle and the "dumping" of inmates of Krome into the community. Due to the fact that Haitians continue to arrive, the population of Krome is ever-increasing. Resettlements cannot be made because of

the above-described dilemma. Thus, in order to relieve the population pressure on Krome, Defendants permit bogus "family reunifications" or as described in the Affidavit of Samuel Constant (Exhibit F), simply "dump" inmates of Krome onto the streets of Miami. In the interim, however, because of the population pressure and the inadequacy of the Krome facility, all standards concerning the control of contagious disease are abrogated.

Defendant Smith admits that the federal government has "failed to adopt a coherent, realistic and effective policy to deal with the influx of immigrants and refugees ..." and that Florida is bearing "an avoidably disproportionat burden...." (Exhibit J). That burden has been caused by Defendants' and their predecessors' irrational use of their parole powers under the immigration laws. Avoidance of the burden could be as readily remedied.

Defendants will doubtless contend that exercise of the parole power under the INA is within their discretion. However, the power of parole may be exercised only "for emergent reasons or for reasons deemed strictly in the public interest..." 8 U.S.C. § 1132(d)(5). As the court stated in Chin Ming Mow v. Dulles, 117 F. Supp. 108, 109 (S.D.N.Y. 1953):

> The Attorney General has discretion to parole excluded aliens for emergent reasons or reasons deemed in the public interest under Section 212(d)95) of the Immigration Act of 1952, 8 U.S.C.A. §1182(dJ95). Otherwise, there is no provision for release of an excluded alien ...

The INS, through its Operation Instructions,[3/] has expressed this statutory requirement in the following terms:

3/ The power to promulgate Operation Instructions was delegated to the Commissioner of INS by the Attorney General pursuant to 8 C.F.R. § 2.1. Buckley v. Gibney, 332 F. Supp. 790, 794 (S.D.N.Y. 1971).

> An applicant for admission shall be held in custody on arrival (or any time thereafter prior to a determination of his admissibility) when it reasonably appears that his freedom in the United States would represent a clear and present danger to the national safety, security, or welfare, or when there is strong reason to believe he might abscond. Upon determining that the applicant should be held in custody at a designated place, such as a hospital or detention facility, Form I-259, shall be executed directing the carrier to "remove" him to that place. When necessary to house an applicant temporarily in an approved jail facility rather than a Service detention facility, the district director's approval of such action in individual cases shall first be obtained.

OI 233.1, 4 C. Gordon & H. Rosenfield, supra at 23-431. Although the Instruction arguably reverses the emphasis established in the statute in that the statute states that release is the exception rather than detention being the exceptional situation, even the Instruction mandates detention in certain instances. Use of the word "shall" in a statute or rule legislative in character indicates a mandatory intent. 1A C. Sands, Sutherland Statutory Construction, §§ 25.04, 31.06. Even were the instruction to be deemed merely procedural in character, Defendants would be bound by it because

> once an agency exercises its discretion and creates the procedural rules under which it desires to have its actions judged, it denies itself the right to violate these rules. United States ex rel. Accardi v. Shaughnessy (1954), 347 U.S. 260, 74 S. Ct. 499, 98 L. Ed. 681.

Pacific Molasses Co. v. FTC, 356 F.2d 386, 389-390 (5th Cir. 1966).

If one looks directly to the language of the statute, it is clear that release of the aliens in question cannot be "strictly in the public interest." It is equally clear from the Statement of Facts, supra, that release, or even detention at Krome in its present over-crowded state,

represents a danger to the national safety under the Operating Instruction, given the prevalence of tuberculosis and other contagious diseases among the detainees. Defendants have not held such detainees in "a hospital or detention facility," but have released them into the South Florida community.[4/]

In addition to the custody requirements of § 1182 (d)(5), and OI 233.1, Defendants have also violated a number of other sections of the INA and the regulations thereunder. Tuberculosis, in its active phase, is a mandatory ground for exclusion as are a number of other contagious diseases which conditions at Krome North create a favorable climate for development. 1C. Gordon & H. Rosenfield, § 2.38e. Section 1222 of Title 8 requires that:

> "aliens ... coming from a country or [who] have embarked at a place where any of such diseases are prevalent... shall be detained... for a sufficient time to enable the immigration officers and medical officers to subject such aliens to observation and an examination sufficient to determine whether or not they belong to the excluded classes."

In the instant case, as described in the Statement of Facts, supra, conditions at Krome North make such an examination impossible due to the mingling of screened and unscreened detainees. Under such circumstances, it is required that "the alien be removed to a place where the examination may be satisfactorily completed. 42 C.F.R. §

4/ With regard to the likelihood that the post-October 10, 1980 entrants may abscond, reference to the determinations of the INS itself in deportation situations is instructive. The absence of ties to the community and the likelihood that through such family ties, the detainee might be able to reside here permanently at some future date have been considered of major importance. Bartholomeu v. District Director, 487 F. Supp. 315 (D. Md. 1980); Matter of Spiliopoulos, I.D. 2661 (July 20, 1978). In the instant case, such close family ties are rarely present. Moreover, the Service has consistently taken the position that it will oppose the Haitians' claims for asylum on the ground that they have sought to enter the United States for economic reasons.

34.11. Defendants have failed to take such steps and are accordingly in violation of the INA.

II. DEFENDANTS HAVE FAILED IN THE CONSTRUCTION AND OPERATION OF KROME NORTH AND IN THEIR RESETTLEMENT PROGRAM FOR HAITIAN ENTRANTS TO COMPLY WITH THE NATIONAL ENVIRONMENTAL POLICY ACT AND EXECUTIVE ORDER NO. 12088

The National Environmental Policy Act ("NEPA" or "the Act") sets forth both substantive and procedural duties which must be complied with by federal agencies. Section 101 of the Act, 42 U.S.C. § 4331, requires federal agencies "to use all practicable means, consistent with other considerations of national policy" to maintain a safe and healthy environment. Section 102 of the Act sets forth a number of procedural directives which federal agencies must follow "to the fullest extent possible." Accordingly, in reviewing actions of federal agencies to determine whether the agency has complied with the requirements of NEPA, courts will look to see if the agencies gave a "hard look" to the environmental consequences of the action. See Kleppe v. Sierra Club, 427 U.S. 390, 410 n. 21 (1976).

In the instant case, the evidence plainly demonstrates that the Defendants not only failed to give a "hard look" to the environmental consequences of their programs involving the Haitian entrants, they gave no look at all to those consequences.[5/] As set forth more fully above, Defendants constructed a resettlement camp which was woefully inadequate to meet the basic human needs of the individuals placed there. As a direct result of Defendants' failure to make the requisite environmental study of its actions,

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5/ A state plainly has standing to bring actions to protect its own rights and those of its citizens from environmental injury by actions of Federal agencies. E.g., State of Alabama, ex rel. Baxley v. Corps of Engineers, 411 F. Supp. 1261 (N.D. Ala. 1976); Commonwealth of Pennsylvania v. Morton, 381 F. Supp. 293 (D. D. C. 1974).

untreated or partially treated sewage from the camp has contaminated the sole source of drinking water for South Florida;[6] individuals carrying communicable diseases are permitted to mix with healthy individuals in the camp; the grounds of the camp are littered with stagnant pools of water and human waste, further exacerbating health problems. Moreover, the environmental impact of Defendants' actions have spread beyond the vicinity of the camp and into the communities of South Florida. Aside from the threat to South Florida's water supply, the uncontrolled release of immigrants from Krome North into the general community has created a dramatic increase in health, sanitation, unemployment and crime problems. Social programs and services administered by the State of Florida and local communities, particularly in the areas of health and education, have become severely taxed.[7] Mounting indications of urban decay and detrimental impact on local economies threaten irreparable environmental harm to South Florida. See City of Rochester v. United States Postal Service, 541 F.2d 967, 973 (2d Cir. 1976). These conditions, which flow directly from Defendants' programs, present the type of problems which NEPA was designed to prevent.

Placing Defendants' failure to comply with the substantive and procedural requirements of NEPA in its most

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6/ Defendant's actions in this respect are in violation of Executive Order 12088, 43 Fed. Reg. 47707 (Oct. 13, 1978), which requires the head of each Executive Agency to ensure "that all necessary actions are taken for the prevention, control, and abatement of environmental pollution with respect to Federal facilities and activities under the control of the agency."

7/ Considerations regarding the availability of adequate housing and schools for "low-and moderate-income groups and racial minorities" have been held to be of "major environmental importance." Prince George County, Maryland v. Holloway, 404 F. Supp. 1181, 1186 (D.D.C. 1975) (relocation of Naval personnel).

charitable light, it may be that Defendants were misled by the provisions of the Refugee Educational Assistance Act ("REAA"), P. L. 96-422. Section 501(c) (3) of that Act provides that:

> The furnishing of assistance or other exercise of functions under this subsection [providing assistance for the case and placement of Cuban and Haitian entrants] shall not be considered a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

This provision arguably exempts the Defendants from preparing an Environmental Impact Statement ("EIS") as required by Section 102(2)(C) of NEPA, on the actions complained of here, since an EIS is required only for "major Federal actions significantly affecting the quality of the human environment." Because the EIS requirement is the best known duty imposed by NEPA, the Defendants might conceivably be lulled into the belief that their actions are exempt from NEPA altogether. However, NEPA contains a number of other provisions -- both substantive and procedural -- which although not as time-consuming or onerous as Section 102(2)(C), still must be complied with by federal agencies.

For example, in discussing the import of the procedural requirements other than those in Section 102(2)(C), the Fifth Circuit stated as follows:

> Subsections 102(2)(A), (B), and (D) through (H) contain directives that are intended to insure the integration of sound environmental planning principles and methods into normal agency procedures. Subparagraph (A) requires the utilization of a 'systematic interdisciplinary approach' that will insure the combination of natural and social sciences in agency decision

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8/ Subsection D referred to in this passage has been redesignated Section 102(2)(E). When NEPA was amended in 1975 a new subparagraph (D) was added and the former subparagraph (D) was redesignated (E).

> making. Subparagraph (B) requires that agencies, in conjunction with the CEQ, develop methods and procedures that will give "presently unquantified environmental amenities" appropriate consideration along with economic and technical factors. Subparagraph (D) requires that agencies "study, develop, and describe" appropriate alternatives to any course of action they decide to recommend. Subparagraphs (E) through (H) provide for the coordination of environmental planning on the local, national, and international levels.

Environmental Defense Fund, Inc. v. Corps of Engineers of the United States Army, 492 F.2d 1123, 1132 (5th Cir. 1974) (citations omitted). Accord Natural Resources Defense Council v. Callaway, 524 F.2d 79, 92-93 (2d Cir. 1975). See McDowell v. Schlesinger, 404 F. Supp. 221, 251-52 (W.D. Mo. 1975) (§ 102(2)(A) of NEPA applies to federal agency decisions even where provisions of § 102(2)(C) are not applicable). Moreover, unless the provisions set forth in Section 101 are to be rendered a nullity, in addition to complying with the procedural requirements set forth in Section 102, federal agencies must carry out their programs to insure a safe and healthful environment.

Plainly, Section 501(c)(3) of the REAA was not intended to absolve Defendants from the responsibility from complying with all the provisions of NEPA. If Congress had intended to provide defendants with a blanket exemption from NEPA's strictures it could have simply stated that the provisions of NEPA do not apply to Defendant's actions. However, Congress did not afford Defendants this broad an exemption. Instead, it narrowed the NEPA exemption afforded Defendants to that provision which would have caused Defendants the greatest delay in responding to the influx of Cubans and Haitians into Southern Florida. This exemption was clearly intended by Congress to allow the Defendants to act with dispatch in meeting the Cuban-Haitian problem. But just as clearly, Congress did not by this exemption intend

to abandon the environment of South Florida in particular, and that of the other states in general, to the vagaries, oversights, and whims of agency officials. By leaving the remaining provisions of NEPA intact, Congress provided a necessary restraint on the Defendants; a restraint Defendants have chosen to ignore.

Plaintiffs are not in this motion asking this Court to order the Defendants to dismantle Krome North. Plaintiffs are, however, asking this Court to require Defendants to abide by the provisions of the NEPA, other than section 102(2)(C) and (D), and to consider the environmental consequences of their continuing course of conduct of placing more Haitian entrants in Krome North than the camp can accommodate and of discharging Haitians into the communities of South Florida. Until such a consequence is fully and properly considered as required by NEPA, Plaintiffs request that Defendants be enjoined from placing Haitian entrants into Krome North beyond the capacity of the camp's facilities and from discharging such entrants into the surrounding communities until proper steps are taken to insure that such entrants have adequate housing and pose no threat to the health and safety of those communities. Finally, Plaintiffs request that Defendants be ordered to abide by the provisions of Executive Order No. 12088 and abate the environmental pollution caused by their operation of the Krome North facility.

III. THE OPERATION OF THE KROME NORTH FACILITY CONSTITUTES A FEDERAL COMMON LAW NUISANCE.

It is well established that pollution can constitute a federal common law nuisance. Illinois v. City of Milwaukee, 406 U.S. 91 (1971). In that case, the Supreme Court found that jurisdiction exists under 28 U.S.C. § 1331(a) for claims of federal common law public nuisance allegedly

created by Milwaukee's pollution of Lake Michigan with untreated sewage. Because the Krome North facility similarly causes pollution, it too is a federal common law public nuisance.

The Defendants herein will likely point to the enactment of the Federal Water Pollution Control Act Amendments of 1972 ("FWPCA") which prompted the Supreme Court earlier this year to find that no federal common law remedy was available to the State of Illinois because the area had been preempted by federal legislation. The City of Milwaukee v. Illinois, ___ U.S. ___, 49 U.S.L.W. 4445 (1981). However, the FWPCA applies only to navigable waters, not to underground bodies of water such as the Biscayne Aquifer. Thus, unlike the City of Milwaukee case, supra, an interstice exists in federal statutory law "to be filled by federal common law." 49 U.S.L.W. at 4450. In addition, the existence of certain federal pollution laws does not begin to cover the situation at Krome North which includes the potential spread of communicable diseases and the federal facilities maintaining living quarters which fall far below acceptable health and sanitary standards.

It cannot be said that Congress "spoke directly" to the question of federal obligations where refugee camps are concerned. Id. at 4448. The Krome North situation presents a new question concerning duties of the federal government insofar as confinement of foreign nationals is concerned and the resultant effects on the surrounding community and the State. It is an area in which Federal law ought to be uniform. See Clearfield Trust Co. v. United States, 318 U.S. 363 (1943).

It should likewise be clear that Plaintiffs need not allege or prove any interstate connection with the Government's conduct at Krome North. There are certain

kinds of disputes -- including pollution and most certainly the standard at federal refugee camps -- which are matters of federal concern:

> We conclude, based on Illinois v. Milwaukee *and the* Federal Water Pollution Control Act, that there is *an* overriding federal interest in preserving, free of pollution, our *interstate* and navigable waters. When a pollution controversy arises, it is immaterial whether there is a showing of extraterritorial pollution effects. The issue is whether the dispute is a matter of federal concern. When it is, as in this case, federal courts should be accessible.

People v. Outboard Marine Corp., 619 F.2d 623 (7th Cir. 1980) (Senior Circuit Judge Wisdom of the Fifth Circuit, sitting by designation).

In another recent case, a Federal district court ruled that allegations of groundwater pollution were sufficient to state a cause of action for injunctive relief on account of groundwater pollution regardless of the lack of claimed interstate effect. United States v. Solvents Recovery Service of New England, 496 F. Supp. 1127 (D. Conn. 1980). The District Court cited numerous cases for the proposition that it is unnecessary to allege an interstate impact of the claimed nuisance:

> In re Owsego Barge Corp., 439 F. Supp. 312, 322 (N.D.N.Y. 1977) (denying crossmotion to dismiss federal common law claim for pollution of navigable waterway affecting only one state); United States Steel Corp. 356 F. Supp. 556 (N.D. Ill. 1978) (denying motion to dismiss claim for federal common law nuisance for intrastate pollution of Lake Michigan); United States v. Ira S. Bushey & Sons, Inc., 346 F. Supp. 145 (D. Vt. 1972) (Oakes, J.) (denying motion to dismiss claim under federal common law of nuisance for pollution of Lake Champlain and Burlington Harbor; no mention of interstate effects); Id., 363 F. Supp. 110, 120-21 (D. Ct.) (order for injunctive relief, partly on the basis of federal common law, in same case), aff'd without opinion, 487 F. 2d 1393 (2d Cir. 1973), cert. denied, 417 U.S. 976, 94 S.Ct. 3182, 42 L.Ed.2d 1146

(1974); cf. Stream Pollution Control Board v. United States Steel Corp. 512 F.2d 1036, 1040 (7th Cir. 1975) (Stevens, J.)

United States v. Solvents Recovery Service of New England, supra, at 1135.

IV. THE OPERATION OF KROME NORTH IS A PUBLIC NUISANCE UNDER STATE LAW IN THAT ITS OVERCROWDED CONDITIONS, OVERTAXED SEWAGE TREATMENT FACILITY, INADEQUATE SANITATION SYSTEM, CONTAMINATED WATER SUPPLY, AND THE CONTAGIOUS DISEASES SUFFERED BY DETAINEES CONSTITUTE A REAL DANGER TO THE HEALTH, SAFETY AND WELFARE OF THE PEOPLE OF THE STATE OF FLORIDA.

The State of Florida has never granted exclusive jurisdiction over Krome North to the United States, either by consent or by deed of cession pursuant to Fla. Stat. § 6.04 (See Exhibit N). In the absence of such a grant, the State of Florida retains the right to enforce its laws upon Krome North. Kleppe v. United States, 426 U.S. 529, 543 (1976); Lord v. Local Union No. 2088, 481 F. Supp. 419 (M.D. Fla. 1979).

A. The Operation of Krome North Constitutes a Common Law Public Nuisance.

The Krome North facility threatens the health, safety and welfare of the South Florida populace in that:

(a) Insufficient medical screening procedures pose the threat of a spread of tuberculosis and other communicable diseases within the community;

(b) Insufficiently treated waste water and untreated human waste are being discharged or leached into the Biscayne Aquifer, the sole source of drinking water in South Florida; both the existing water well and a large, separate fire well over 100 feet from the water well, both of which are approximately 200 feet from the drainage field, are seriously contaminated by fecal coliform bacteria.

(c) Overcrowded living conditions and insufficient waste water treatment facilities have contributed to the

contamination of the fresh water drinking supply at Krome North and to the additional health hazards to detainees held there. Dade County has ordered all water from the well to be boiled before drinking but this is not being done (See Exhibit D, Ex. 5). Since that order was issued, the water from the well has not been free of contamination for two consecutive days as required.

Without question, the operation of the Krome North facility has an adverse environmental impact on the South Florida community. Further, it violates a variety of health and environmental laws including Chapter 386 of the Florida Statute (sanitary nuisances), Chapter 387 (underground waters) and Chapter 403 (environmental control). As such, the camp constitutes a public nuisance as defined by the Supreme Court of Florida:

> A common or public nuisance affects the public. It is such an inconvenience or troublesome offense as annoys the whole community, in general, and not merely some particular person.... Laws in substance define a nuisance to consist in unlawfully doing an act or in omitting to perform a duty which either annoys, injures or endangers the comfort, health, repose or safety of the citizen, or which unlawfully interferes with or tends to obstruct, or in any way renders unsafe and and insecure other persons in life or in the use of their property. Such commission or omission becomes a public nuisance when it affects an entire community or any considerable number of persons. Prior v. White, 132 Fla. 1, 180 So. 347, 355 (1938).

Under Florida law, the right to enjoin a common law nuisance exists separate and apart from statutory remedies. Where riparian property owners sought injunctive relief on account of a nearby farm discharging noxious chemicals into a lake, it was not necessary to first exhaust administrative remedies under the Florida Pollution Control Act. Asserting a common law right to abate the nuisance was sufficient. Wetzel v. A. Duda & Sons, 306 So.2d 533 (4th

D.C.A.), cert. denied, 316 So.2d 289 (Fla. 1975). Likewise, it was no defense to an action to enjoin the operation of a town dump that the plaintiffs had failed to exhaust administrative remedies. The "common law right to abate a nuisance" was a sufficient ground upon which to base the injunction. Town of Surfside v. County Line Land Co., 340 So.2d 1287, 1289 (Fla. 3d D.C.A. 1977).

B. The Operation of Krome North Constitutes A Statutory Nuisance as Defined by Florida Law.

The Florida Legislature has provided a statutory method of abating nuisances. The term "nuisance" is defined in broad terms:

> Whoever shall erect, establish, continue, or maintain, own or lease any building, booth, tent, or place which tends to annoy the community, or become manifestly injurious to the morals or manners of the people as described in § 823.01, or shall be frequented by the class of persons mentioned in § 856.02, or any house or place of prostitution, assignation, lewdness or place or building where games of chance are engaged in violation of law or any place where any law of the state is violated, shall be deemed guilty of maintaining a nuisance, and the building, erection, place, tent or booth and the furniture, fixtures and contents are declared a nuisance. All such places or persons shall be abated or enjoined as provided in §§ 60.05 and 60.06. Fla. Stat. § 823.05 (Emphasis applied).

Further, Fla. Stat. § 60.05 provides that the State Attorney General, or for that matter, any citizen, may sue in the name of the State to enjoin a nuisance.

Under terms of section 823.05, a nuisance can be a "place which tends to ... injure the health of the community." The affidavits attached hereto make a strong showing of injury to the South Florida community, including the potential pollution of its sole source of drinking water. Section 823.05 was upheld by the Supreme Court of Florida against a claim that it was unconstitutionally vague

in a case involving a suit to enjoin a business on account of drug use on the property. Orlando Sports Stadium, Inc. v. State, 262 So.2d 881 (Fla. 1972). Activities with far less potential for harm than the Krome North situation can constitute nuisances under the law. See State ex rel. Shevin v. Morgan, 289 So.2d 789 (Fla. 2d D.C.A. 1974); Sawyer v. Robbins, 213 So.2d 515, 517 (Fla. 3d D.C.A. 1968); State v. Rapuano, 153 So.2d 353 (2d D.C.A. 1963), appeal dism'd, 168 So.2d 795 (Fla. 1964).

C. Krome North Constitutes a "Sanitary Nuisance" in Violation of Chapter 386 of the Florida Statute.

Florida law defines a sanitary nuisance as an act "by which the health or life of an individual, or the health or lives of individuals, may be threatened or impaired, or by which or through which, directly or indirectly, disease may be caused." Fla. Stat. § 386.01. Additionally, the Legislature has declared that certain acts "shall constitute prima facie evidence of maintaining a nuisance injurious to health." Fla. Stat. § 386.041. Those include, inter alia, the discharge of "untreated or improperly treated human waste, garbage, ... improperly maintained water closets, or privies," ... and the "creation, maintenance, or causing of, any condition capable of breeding flies, mosquitos ... capable of transmitting diseases, directly or indirectly to humans." Fla. Stat. § 386.041.

Chapter 386 has been held to apply to a variety of situations:

(1) A City of Miami incinerator, known locally as "Old Smokey," was enjoined from operating, notwithstanding the City's argument that its discharge was "relatively insignificant" when compared to that of other polluters in Dade County. City of Miami v. City of Coral Gables, 233 So.2d 7 (Fla. 3rd D.C.A. 1970).

(2) A rendering plant which converted meat scraps to tallow was held subject to the Act because of the unsanitary disposal of waste and bones. See Florida Processing Co. v. State ex rel. Gerstein 277 So.2d 547 (Fla. 3d D.C.A. 1973).

(3) It was proper for the court to require that a hog farm limit its animal population to 1,000 head in order to reduce the noise and odors which bothered a neighbor. Mercer v. Brown, 190 So.2d 610 (Fla. 1st D.C.A. 1966).

Obviously, in none of these situations was the danger of actual harm to environment and populace nearly so great as in the situation presented at Krome North. Krome North poses the real danger of the spread of contagious diseases and pollution of the area's water supply.

D. Operation of Krome North Violates the State's Water Pollution Law.

The waste treatment system at Krome North has been unable to sufficiently treat waste water because of over-population at the camp (Exhibit D). The inadequate sewage treatment system has permitted excessive amounts of insufficiently treated sewage to drain onto the ground (Exhibit B). That the sewage is entering the underground water supply is beyond dispute. The 40-foot-deep drinking water well at the camp has been found to be contaminated with fecal coliform bacteria (Exhibits C & D). The fire wells show very high levels of the same type of contamination.

Operation of Krome North in its current form violates Chapter 387 of the Florida Statute which prohibits the discharge of sewage into the "underground waters of the State." Fla. Stat. §§ 387.01, 387.04. Violation of the statute is both a crime, Fla. Stat. § 387.06, and a practice which is subject to abatement by injunction, Fla. Stat. § 387.10.

E. Operation of Krome North Violates the State's Environmental Control Law.

In addition to violating the underground water law, the same conduct of disposing of waste in the waters of the State violates Fla. Stat. § 403.161(1), which prohibits the causing of pollution as defined in Fla. Stat. § 403.031(2), or the violation of or the failure to comply with "any rule, regulation, order, permit ... adopted or issued by the Department [of Environmental Regulation)." The improper operation of the sewage treatment plant at Krome North is in violation of Fla. Stat. § 403.087 and Chapter 17-4, Florida Administrative Code, in that Krome North, pursuant to the permit issued by the State upon application by Raymond A. Morris, District Director, INS on November 24, 1980, was required to be operated in accordance with its design capacity and other requirements of the permit (Exhibit Q). But as set forth in the affidavits, and in the Notice to Correct Violations dated July 9, 1981, these requirements have consistently not been met (Exhibits B, D and O).

A violation of Fla. Stat. § 403.161 authorizes the State to seek injunctive relief to enforce complaince with the Chapter's requirements, including any permit issued thereunder. Fla. Stat. § 403.131. Further, the Dade County Department of Environmental Resources Management has available to it all remedies made available to the State under Chapter 403, its jurisdiction being concurrent. Fla. Stat. § 403.182 (8).

Moreover, the statute's environmental control chapter expresses a clear intent to provide safe drinking water throughout the State. Fla. Stat. § 403.851. The presence of fecal coliform bacteria in the raw water taken from the sole source of drinking water at Krome North (Exhibits C and D) constitutes a violation of the drinking water standards of the State of Florida. See Fla. Stat. § 403.853,

403.859. Moreover, the operation of Krome North as set forth in the affidavits violates the permit for a public drinking water system (Exhibit R) which was applied for and issued to INS under Fla. Stat. Ch. 403 and Chapter 17-22, Florida Administrative Code.

V. THE DEFENDANTS' IMMIGRATION POLICY UNCONSTITUTIONALLY OPERATES TO DISPLACE THE STATE'S ABILITY TO STRUCTURE INTEGRAL OPERATIONS IN AREAS OF TRADITIONAL GOVERNMENTAL FUNCTIONS.

As established above, the Defendants have violated the NEPA, the INA, the APA, Executive Order No. 12088, federal common law, and state public health and environmental safety requirements. These violations rise to the level of a constitutional violation, constituting as they do an impermissible, illegitimate exercise of federal power that operates "to directly displace [Florida's] freedom to structure integral operations in areas of traditional governmental functions" in contravention of the Tenth Amendment. National League of Cities v. Usery, 426 U.S. 833, 852 (1976). The Supreme Court has recognized that policies of federalism grounded on the Tenth Amendment prohibit an otherwise valid exercise of federal power where Congress attempts to regulate a state in its capacity as a sovereign entity, thereby impairing a state's "ability to function effectively in a federal system." Id. at 852 (citing Fry v. United States, 421 U.S. 542, 547 n.7 (1975)).

In National League of Cities, supra, the Court invalidated the 1974 amendments to the Fair Labor Standards Act. Although conceding that the legislation was "undoubtedly within the scope of the Commerce Clause," 426 U.S. at 841, the Court found that the legislation impermissibly interfered with the state's decisionmaking authority in areas of traditional governmental functions. Id. at 852. A balancing of state and federal interests,

however, is not required in the instant case. In contrast to National League of Cities, the actions of the Defendants in the present case do not constitute a valid exercise of federal power. To the contrary, the procedures effectuated by the Defendants constitute an abrogation of their responsibilities under federal immigration legislation. This abrogation is evidenced most clearly by the Defendants' decision, absent any statutory authority, to postpone indefinitely a determination of the Cuban-Haitian entrant status. Furthermore, the Defendants' actions at Krome North and surrounding communities are in violation of various state and federal legislation. This illegitimate exercise of federal power, impairing as it does the State of Florida's capacity to function as a sovereign state, contravenes the policies of federalism embodied in the Tenth Amendment.

Defendants' immigration policy impermissibly intrude on traditional state functions in areas of health and rehabilitative services, housing, education, employment, law enforcement and public safety. This intrusion has placed an unfair burden on the state and local governments, thereby diminishing their ability to furnish essential public services. See National League of Cities, 426 U.S. at 851. Additionally, the Defendants' actions in dispersing more than 100,000 aliens into South Florida has had the effect of usurping the State's decisionmaking process "in areas of traditional functions." Id. at 852. The State is no longer free to pursue an orderly process in developing and administering public services. Instead, it must strive to provide services for those Cuban-Haitian entrants already in Florida as well as for its own citizens, while the influx of Cuban and Haitian refugees continues on a daily basis.

It is patently insufficient to suggest that the policy

choices involved in developing and implementing plans to meet the Cuban-Haitian influx are left to the State of Florida, and therefore no impermissible federal interference exists. The State has no choice but to expend its limited resources to meet the needs of those who require essential services. See generally Doe v. Plyler, 628 F.2d 448 (5th Cir. 1980) (Texas statute that had been applied so as to deny free public education to children based on the child's status as an undocumented Mexican alien violated the equal protection clause), prob. juris. noted, 101 S.Ct. 2044 (1981). Indeed, it is the additional burden, both direct and indirect, of supporting the Cuban-Haitian entrants that is jeopardizing the State's fiscal and service responsibilities to its own citizens.

It should be emphasized that the State of Florida is not challenging the federal government's recognized power to expel or exclude aliens, Fiallo v. Bell, 430 U.S. 787 (1977), or its power to draw rational distinctions between classes of aliens, Pierre v. United States, 547 F.2d 1281 (5th Cir. 1977). Nor is the State of Florida challenging Congress' power to grant benefits to some aliens and not to others. Matthew v. Diaz, 426 U.S. 67 (1976). Rather, the State is alleging that in maintaining the number of entrants at Krome North beyond the number for which that facility is designed and in continuing to release entrants into communities in South Florida without meaningful preparation or supervision, the Defendants are interfering with Florida's ability to function in her sovereign capacity in contravention of the Tenth Amendment.

Where the legitimate exercise of congressional power "outweighs the interference with the states' self-determination in providing its essential public services, the Tenth Amendment is no bar to congressional action."

Peel v. Florida Dept. of Transportation, 600 F.2d 1070, 1083 (5th Cir. 1979). See also Hodel v. Virginia Surface Mining Reclamation Association, 49 U.S.L.W. 4654, 4660 n.29 (June 15, 1981). But where, as in the instant case, the Defendant's procedures serve no valid purpose, they cannot justify the resultant intrusion into areas of state sovereignty. As noted by the Attorney General of the United States, William French Smith, in remarks at the 31st Annual Convention of the Florida Bar, June 27, 1981:

> Immigration is a matter of national policy. Neither Florida nor any other state or region should bear an avoidably disproportionate burden in dealing with either immigrants or refugees. (emphasis added). (Exhibit J.)

The State of Florida submits that by forcing it to bear this disproportionate burden, Defendants have effectively reduced the likelihood that any meaningful political coalition will arise to defend its interests. In instances such as the present one, where the political safeguards of federalism fail to adequately protect state interests, the judiciary should be particularly sensitive to state challenges of federal action on grounds of interference with state sovereignty. Therefore, because Defendants' actions impermissibly contravene the protection of state sovereignty embodied in the Tenth Amendment, Plaintiffs submit that this Court should declare those actions unconstitutional, and issue the requested injunctive relief.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that their Motion for a Temporary Restraining Order and a Preliminary Injunction be granted.

Respectfully submitted,

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Stephen G. Cary
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Executive Secretary
Colin W. Bell
Executive Secretary Emeritus

July 21, 1981

President Reagan
The White House
1600 Pennsylvania Avenue
N.W.
Washington, D.C. 20500

Dear President Reagan:

As you examine the issues of Haitian migration to the United States the AFSC urges you to consider the most fundamental of our traditions and to take the most illuminated look into our future.

The coming of Haitians to the United States is a great leap of hope and faith. Even when facing detention, insecurity in their immigration status, exploitation, absence of health care and inhumane housing in the United States, many Haitians still believe themselves to be fortunate looking towards the future in this land of opportunity.

Our national involvement with the entry of Haitians--40,000 or more in the last decade--is not limited to what we do once they are here, but encompasses what we do and what we have done to support the conditions that ultimately drove them to leave Haiti. This migration problem is not going to be solved through immigration policy alone.

For the Haitian people, widespread, bitter poverty and the abuse of human rights push them to leave their homes, break their ties and seek a new place. Their perception of an opportunity to work and live free of arbitrary interference in a bountiful, democratic society pulls them here.

The Immigration and Nationalization Service (INS) cannot control either of these forces: the push and the pull, which in effect are two aspects of one reality.

We would like to remember together some facts about Haitian migration to the United States.

Haitians started arriving in small boats, so far as is publicly known, in December, 1972. For a time the

situation appeared to be a relatively short-lived emergency. They were treated as refugees but given no status as such. The people kept coming, slowly at first, but over the months the number grew large. The INS demanded the equivalent of appearance bonds and put hundreds unable to pay in jail--scattered over several cities and countries. For a while the attempt was made to keep some in Texas. Many Haitians spent up to fourteen months in one jail or another.

The State Department and the Justice Department made it very clear that they did not welcome Haitians, and did not consider them really refugees. They refused to confer any status except the uncertain one of a limited parole. Still, the numbers grew--sometimes in big waves, sometimes in scattered landings.

A wholesale expulsion of Haitian men, women and children was probably prevented only by action in federal court to protect due process rights, backed by concerned, primarily religious organizations.

The spring of 1980 witnessed the phenomenon of Mariel: Cubans coming as boat people, in boats that were sent from the United States. Haitians kept coming too, in a ratio of about one Haitian to seven Cubans. President Carter created the Cuban Haitian Entrant (CHE) status, and made it retroactive to include Haitians who had arrived after January 1972 and had some INS identification. The new status was a parole to January 15, 1981. Extended to July 15, 1981 and on that date extended "until further notice", the CHE classification allowed people to work and receive such federally funded benefits as food stamps, if otherwise eligible.

This spring the CHE status was cut off for those arriving after October 10, 1980. Boat loads of Haitians are still coming to United States shores.

Last fall we as a nation came to recognize that our immigration laws could not deal with the current phenomenon of Caribbean migration to the United States. We saw that this movement of people called for a deeper look, not only at ourselves, but at the rest of the world.

Some segments of the public, especially in Florida, perceived the entry of Haitians as an abuse of the generosity of the United States. They were supported in their fears by members of Congress who argue that a generous immigration policy now invites an invasion of refugees in the future. We believe that, just as in the case of Asian migration the impact of Haitian arrivals on one state, Florida, could be offset by federal funds, which are not now available because the Cuban Haitian Entrants have been denied refugee status. It is possible that the rejection of Haitians has deeper roots than a concern for economic impact. Yet we believe that the Haitians have not yet been given an opportunity to show here their strength, hope and resourcefulness as a people; that their foreign culture and language are a barrier at the present time, but could be a gift to this society. We believe that our immigration laws, employment practices and social services systems have not given a fair chance to the Haitians here.

In the long run only the amelioration of conditions in Haiti will provide a satisfactory solution to the Haitian exodus, a problem that obviously has its greatest impact on Haitians themselves.

Once more a people, seeking to migrate and contribute to the United States, is singled out, mistreated and rejected. The proposed interdiction in the high seas of Haitian boats bringing refugees to our shores takes us back to 1939, when the SS Saint Louis sailed from Germany to Havana with over 900 Jewish refugees, who were eventually rejected by the Cubans, the United States and many other governments. Most of these people died later in concentration camps. Most Haitians sent back to their country would not face a better fate. The episode of Cayo Lobos in November of 1980 illustrated the point: washed ashore to the small Bahamian island where they spent 39 days with little food and water, one hundred Haitians refused to go back to Haiti, until they were taken there by violent force.

Sending out U.S. ships to scour the seas and board suspicious looking boats and ships in order to prevent Haitians from reaching our shores, seems a desperate, violent measure repugnant to international custom and foreign to our principles.

Inducing a sovereign nation to hold its own people prisoners, even when they cannot all subsist and many of them live in well founded fear of their own government, is another measure difficult to reconcile with the avowed standards of United States behavior in international affairs.

In the course of our daily work we have witnessed the suffering of the Haitian people in the United States. We have seen isolation: the Creole language, in all its beauty and expressive power, has no roots in our country. We have seen fear: exclusion and deportation are always possible. We have seen anxiety: the separation of one's family, a loss of community support and the experience of being an alien are immense stresses on any human being. We have seen hunger: employment is not always available, and relief services may be impossible or difficult to obtain. We have seen abuse: some employers and landlords find the helplessness of some Haitian people an occasion to profit. We have seen racial discrimination: in thought and practice towards these Black newcomers. But we have also seen openness, welcoming love and hope.

The American Friends Service Committee believes it is time to create a new policy towards migration as it affects and is affected by the United States. The policy would include domestic roles, not only for the INS, but also for other agencies dealing with employment, education, health, nutrition and housing. Appropriate federal agencies would establish relations with other countries or international bodies such as the UN and the OAS aimed at reducing through mutual efforts the complex factors that cause international migration of impoverished people. In order to make these efforts most effective they should include serious participation by the people most directly affected. The benefits to human beings of economic development, international trade, use of natural resources, and availability of capital, need to be considered.

With regard to the immediate need for immigration policy toward Haitians we believe that removing the fear of involuntary return and establishing a process whereby they can become permanent residents and citizens would lead to more effective resettlement efforts throughout the country, both by voluntary agencies and the refugees themselves. It would also help the people already here find better jobs and concentrate more intensely upon improving their ability to contribute the U.S. society. It is also very important to make visas for unification of families available through the normal consular channels.

Finally, as we stated before, the impact of the CHE status on the state of Florida will be largely reduced when we take responsibility as a nation for the integration of Haitian refugees into our nation, and allocate federal funds to the provision of services and the coverage of resettlement costs, a gesture which is not only compassionate but also a solid investment in the future.

These steps would facilitate efforts by the INS to keep track of Haitians and their activities. They would also encourage Haitians to cooperate with health and other agencies working to maintain safe living, environmental and working conditions.

History indicates that unsupervised flight from Haiti to the United States is likely to continue as long as the pressures to migrate continue. While long range international efforts are underway to reduce these pressures, we propose that INS, in cooperation with public and voluntary agencies, should receive enough financial support to provide reception centers where the new arrivals could be identified, examined for health problems, met by legal advisors acceptable to the Haitian community to explain their rights, and allowed to find out what the realities are of their chances to make good. If they chose to remain, they would be released through an orderly resettlement program.

We are commending to you, President Reagan, the fate of the most dispossessed people in our hemisphere. We hope that you will address this issue in all its breadth and significance. In the ultimate analysis what happens to any one people in the world has to do with what happens to all of us. There is only one human race, and the earth is its house.

Respectfully,

Asia Bennett

Asia Bennett
Executive Secretary

J. Philip Buskirk

J. Philip Buskirk
Florida Based Consultant
on Immigration

AB:JPB:bph

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., August 6, 1981.

Hon. WILLIAM F. SMITH,
Attorney General, Department of Justice,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: I am writing to express my deep concern over the Administration's proposal to interdict Haitian boats on the high seas which immigration officers on Coast Guard vessels suspect are carrying passengers who may be destined for the United States. It is my understanding that such an operation has now been authorized for a three-month period beginning August 15, 1981.

From the testimony at the Subcommittee's hearings on this question on July 30th and 31st, I believe such a step would be extremely ill-advised, impractical, and possibly dangerous to life. It would also set an extraordinarily unfortunate diplomatic precedent. Also, it will be unnecessarily costly according to figures I have received from Coast Guard officials—at least $3 to $4 million for three months.

In addition, what are the legal authorities for such interdictions on the high seas and for the actions of immigration officials once on board foreign vessels? I believe the Subcommittee should have the benefit of the confidential memorandum prepared for you on this question by the Office of Legal Counsel in the Department of Justice.

From the hearing last week, I believe there are a number of additional questions and issues that must be addressed:

1. What are the diplomatic ramifications of such unilateral action by the United States to interdict and board foreign flag carriers on the high seas—especially in relation to our diplomatic efforts to deter similar action by Southeast Asian nations against Vietnamese "boat refugees"?

2. What procedures follow in proceessing Haitians who seek asylum in the United States, and under what authorities of law? How will those procedures differ from those used to process Haitians or other asylum claimants on dry land?

3. What are the objectives of the proposed bilateral negotiations with Haiti? What assurances have the Government of Haiti given our government on the status and treatment of Haitians who will be physically towed back on boats to Haiti?

4. Has the Office of the United Nations High Commissioner for Refugees been consulted on this operation and has it been determined that such an interdiction effort is consistent with both the letter and spirit of the United Nations Convention and Protocol Relating to the Status of Refugees, which we signed in 1968?

I fully share the Administration's concern over the need to expeditiously process asylum claims, yet with full regard for the law and the legitimate claims of *bona fide* refugees. As a member of the Select Commission on Immigration and Refugees Policy I supported all of its recommendations towards this end, and as Ranking Minority Member of the Subcommittee I will support your efforts as well, However, I believe this is where our energies should be directed—toward resolving the log-jam and litigation that has developed around the processing of Haitian asylum claims in Florida—not in chasing Haitian boats across the high seas.

For the record of the Subcommittee's hearing I would appreciate receiving your comments on these questions as soon as possible.

Many thanks for your consideration and best wishes.

Sincerely,

EDWARD M. KENNEDY,
Ranking Minority Member.

United States Department of Justice

Immigration and Naturalization Service

Washington, D.C. 20536

CO 703.1192
CO 1504

NOV 13 1981

Honorable Edward M. Kennedy
Ranking Minority Member
United States Senate
Committee on the Judiciary
Washington, DC 20510

Dear Senator Kennedy:

This is in response to your August 6, 1981 letter to the Attorney General in which you pose a series of questions concerning the interdiction of vessels bringing persons to the United States in violation of United States immigration laws.

Attached is the legal memorandum of the Office of Legal Counsel (OLC) of the Department of Justice, dated August 11, 1981, which discusses at some length the legality of the interdiction program under United States and international law. This memorandum sets forth the legal authority for this program.

In your first question, you raised the issue of international reaction to the interdiction program. It is clear under the OLC memorandum that the United States Coast Guard may stop and board vessels of foreign flag registration with the consent of the flag nation. We obtained the consent of the Haitian government to stop and board Haitian flag vessels in a September 23, 1981 agreement with that nation. As far as comparison with the situation in Southeast Asia is concerned, the reply to criticism that may be raised is that the United States will not return persons to a country of persecution. Immigration and Naturalization Service officers will be stationed on board the Coast Guard vessel to carry out our obligations under the United Nations Convention and Protocol Relating to the Status of Refugees.

In response to your second question, I can assure you that aliens who fear returning to Haiti will have every opportunity to claim that they qualify as refugees. Two immigration officers, experienced in handling refugee and asylum claims, will be part of every boarding party. To the extent that the Coast Guard Commanding Officer deems it safe, the INS officers will speak individually to each person on the interdicted vessel. Each person will be asked (through an interpreter) his name, date of birth, nationality, home town, and the reason for departure. Any documents presented by the persons on board will also be examined by the INS officers.

The INS officers have been directed to be constantly watchful, as they speak to each individual, for any indication that a person may qualify as a refugee under the U.N. Convention and Protocol. Should any indication of such possible qualification arise, INS officers will conduct further interviews regarding such possible qualification. Consultation with the Department of State will be available, if necessary. If an interview suggests that a legitimate claim to refugee status exists, the person involved will be removed from the interdicted vessel, and his or her passage to the United States will be arranged. Upon reaching the United States, a formal application for asylum may be made. These procedures fully comply with our responsibilities under the U.N. Convention and Protocol.

Persons already within or at the borders of this country apply for asylum under the U.S. immigration laws. The procedures to be followed in these cases, and the levels of review available, are set forth in section 208 of the Immigration and Nationality Act, 8 U.S.C. 1158. Aliens who have not reached our borders (such as those on board interdicted vessels) are not protected by our immigration laws, but rather only by the U.N. Convention and Protocol.

Your third question deals with the objectives of the agreement with Haiti. The main objective of the agreement was to allow us to board Haitian flag vessels as part of our effort to prevent illegal migration of aliens to the United States. The attached OLC memorandum touches on the various issues present in the interdiction program from a legal point of view. A general objection raised to the agreement with Haiti is the allegation that we would assist Haiti in persecuting its citizens. The proposed procedures, as noted, will prevent the return of any person with a well-founded fear of persecution. Additionally, the Government of Haiti has given its unqualified assurance that returned migrants will not be prosecuted for their illegal departure or otherwise persecuted. Smugglers may be prosecuted under Haitian law.

In response to your last question, the United Nations High Commissioner for Refugees was fully briefed on the interdiction program before it went into operation.

I hope that this information will be of use to you.

Sincerely,

Executive Assistant

Attachment

87-265 O - 82 - 15

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Proposed interdiction of Haitian flag vessels

This responds to your inquiry of August 7, 1981 concerning the implementation of the proposed interdiction of Haitian flag vessels. As presently formulated, the Government of Haiti and the United States will enter into an agreement (the Agreement) permitting the United States Coast Guard (Coast Guard) to stop Haitian flag vessels, board them and ascertain whether any of the Haitians aboard have left Haiti in violation of its travel laws and whether they intend to travel to the United States in violation of United States immigration laws. Individuals who are determined to have left Haiti illegally will be returned to Haiti pursuant to the President's authority in the field of foreign relations in order to assist Haiti in the enforcement of its emigration laws. Those who have left Haiti, whether legally or illegally, in an attempt to enter the United States illegally will be returned to Haiti pursuant to the President's authority under 8 U.S.C. §§ 1182(f) and 1185(a)(1) to enforce United States immigration laws, to protect our sovereignty, and as an exercise of his power in the field of foreign relations. 1/

The Coast Guard plans to intercept the Haitian vessels in the Windward Passage, on the high seas but relatively close to Haiti. 2/ At that point, Haitians will be headed toward either the United States or the Bahamas. Although experience suggests that two-thirds of the vessels are headed toward the United States, it is probable that, as the interdiction continues, an ever-increasing number will claim they are going to the Bahamas. Unless the Haitians admit they are coming to the United States, establishing their intended destination may become more difficult.

1/ We note that the Agreement does not cover United States vessels, either while they are in Haitian waters or while they are on the high seas. Therefore, the Agreement does not contemplate the return of the Haitians on board such vessels to Haiti.

2/ Placing the Coast Guard vessels closer to the United States is apparently not possible because of the increased difficulties and costs of detecting and interdicting vessels from Haiti once they have traveled far from Haiti and the practical problems of caring for the Haitians during the four day voyage back to Haiti.

1. Effect of the Immigration and Naturalization Act (INA): The interdiction will not be affected by the provisions of the INA. Aliens are entitled to exclusion proceedings only when they arrive "by water or by air at any port within the United States." 8 U.S.C. § 1221. They are entitled to deportation proceedings only if they are "within the United States." 8 U.S.C. § 1251. Asylum claims may only be filed by those "physically present in the United States or at a land border or port of entry." 8 U.S.C. § 1158(a). Since the interdiction will be taking place on the high seas, which is not part of the United States, 8 U.S.C. § 1101(a)(38), none of these provisions will apply.

2. Coast Guard authority to enforce United States laws: The Coast Guard is authorized to stop ships upon the high seas in order to detect violations of American laws. 14 U.S.C. § 89(a). 3/ The interdiction at sea of a foreign flag vessel requires the

3/ This section states:

> The Coast Guard may make inquiries, examinations, inspections, searches, seizures, and arrests upon the high seas . . . for the prevention, detection, and suppression of violations of laws of the United States. For such purposes, commissioned, warrant, and petty officers may at any time go on board of any vessel subject to the jurisdiction, or to the operation of any law, of the United States, address inquiries to those on board, examine the ship's documents and papers, and examine, inspect, and search the vessel and use all necessary force to compel compliance. When from such inquiries, examination, inspection, or search it appears that a breach of the laws of the United States rendering a person liable to arrest is being, or has been committed, by any person, such person shall be arrested or, if escaping to shore, shall be immediately pursued and arrested on shore, or other lawful and appropriate action shall be taken; or, if it shall appear that a breach of the laws of the United States has been committed so as to render such vessel, or the merchandise, or any part thereof, on board of, or brought into the United States by, such vessel, liable to forfeiture, or so as to render such vessel liable to a fine or penalty and if necessary to secure such fine or penalty, such vessel or such merchandise, or both shall be seized.

permission of the flag state, which the contemplated Agreement expressly grants. 4/ The authority for returning the Haitians who are attempting to enter the United States illegally may be found in both statutory authority and implied Constitutional authority under Article II. The two statutes are 8 U.S.C. §§ 1182(f) & 1185(a)(1). The first, 8 U.S.C. § 1182(f), states:

> Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate. 5/

The second, 8 U.S.C.A. § 1185(a)(1), provides:

> (a) Unless otherwise ordered by the President, it shall be unlawful --
>
> > (1) for any alien to . . . attempt to . . . enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe; . . . .

Under § 1182(f), the President would make a finding that the entry of all Haitians without proper documentation is detrimental to the interests of the United States and issue a proclamation supending their entry. It could be argued that the entry of illegal aliens, Haitians or otherwise, is already "suspended" since it is already illegal for them to come, and that the section is directed against those who are otherwise eligible. The section, however, is not limited by its terms to documented aliens, and the legislative history is silent on this point. Since the section delegates to the President the authority to exclude entirely certain classes of aliens, we believe that a return of the Haitians can be based on the Coast

4/ The continuing jurisdiction of a country over vessels flying its flag on the high seas is a basic principle of international law. 1 Oppenheim, International Law § 264 (8th ed. 1955). This principle has been codified in the Convention on the High Seas, art. 6. 13 U.S.T. 2313, T.I.A.S. No. 5200. Ships flying no flag may also be stopped to determine if they are stateless.

5/ Neither this Office nor INS is aware of any time when the power granted by this section, added in 1952, has been used.

Guard's power to enforce federal laws. 14 U.S.C. § 89(a). Likewise, § 1185(a)(1) makes it unlawful for any alien to enter the country unless in compliance with the rules and limitations set by the President. All of the undocumented Haitians who are attempting to enter the country are therefore doing so in violation of this section. See also 8 U.S.C. § 1103 (Attorney General's duty to control and guard the borders); Ex parte Siebold, 100 U.S. 371, 396 (1879). 6/

Implied constitutional power is less clear. Where Congress has acted, the regulation of immigration is an area in which Congress exercises plenary power. Kleindienst v. Mandel, 408 U.S. 753, 766 (1972) (power to exclude aliens prevails over First Amendment interests of citizens). There has been recognition, however, that the sovereignty of the nation, which is the basis of our ability to exclude all aliens, is lodged in both political branches of the Government. See Ekiu v. United States, 142 U.S. 651, 659 (1892). An explicit discussion is found in United States ex rel. Knauff v. Shaughnessy, 338 U.S. 537 (1950). Rejecting a claim that it should review regulations which excluded a German war bride, the Court stated:

> Petitioner contends that the 1941 Act and the regulations thereunder are void to the extent that they contain unconstitutional delegations of legislative power. But there is no question of inappropriate delegation of legislative power involved here. The exclusion of aliens is a fundamental act of sovereignty. The right to do so stems not alone from legislative power but is inherent in the executive power to control the foreign affairs of the nation. United States v. Curtiss-Wright Export Corp., 299 U.S. 304; Fong Yue Ting v. United States, 149 U.S. 698, 713. When Congress prescribes a procedure concerning the admissibility of aliens, it is not dealing alone with a legislative power. It is implementing an inherent executive power.

6/ Given the desperate physical condition of many of the Haitians found on the high seas, the Coast Guard may, in particular situations, also be acting pursuant to its duty to render aid to distressed persons and vessels. 14 U.S.C. §§ 2, 88.

338 U.S. at 542-43 (citations omitted) (emphasis added). See also Savelis v. Vlachos, 137 F. Supp. 389, 395 (E.D. Va. 1955) aff'd, 248 F.2d 729 (4th Cir. 1957) (dictum).

The President, in the exercise of this inherent authority, would be acting to protect the United States from massive illegal immigration. His power to protect the Nation or American citizens or property that are threatened, even where there is no express statute for him to execute, was recognized in In re Neagle, 135 U.S. 1, 63-67 (1890). See also In re Debs, 158 U.S. 564, 581 (1895); United States ex rel. Martinez-Angosta v. Mason, 344 F.2d 673, 688 (2d Cir. 1965) (Friendly, J. concurring); 50 U.S.C. § 1541 (War Powers Resolution). 7/ A recent Supreme Court decision points out that, in the absence of legislation, it was a common perception that the President could control the issuance of passports to citizens, citing the the foreign relations power. Haig v. Agee, No. 80-83 (S.Ct. June 29, 1981), slip op. at 12.

The President may also act to return the boats with the flag state's permission as an exercise of his power in the field of foreign relations, a field in which "with its important, complicated, delicate and manifold problems, the President alone has the power to speak or listen as a representative of the nation." United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 319 (1936). See also Narenji v. Civiletti, 617 F.2d 745, 747-48 (D.C. Cir. 1979), cert. denied, 100 S.Ct. 2978 (1980) (regulation of Iranian students); Chicago & Southern Air Lines, Inc. v. Waterman S.S. Co., 333 U.S. 95 (1948) (regulation of foreign airlines). The President's power is strongest where he has well recognized constitutional powers (foreign affairs) to which Congress has added statutory delegation (8 U.S.C §§ 1182(f), 1185).

3. Coast Guard authority to enforce Haitian law pursuant to an Agreement entered into by the Executive: The Coast Guard has submitted a draft Agreement that would permit the Coast Guard to board Haitian vessels in order to determine whether any alien is committing an offense against Haitian emigration laws. The issue which arises is whether the Executive can enter into an agreement under which the United States agrees to detain Haitians who are emigrating in violation of Haitian law in order to return

7/ This Office has relied upon such inherent authority in an opinion, stating that the President could act to prevent airplane highjackings by placing marshals on board, even in the absence of express authority to take such preventive measures. Memorandum to Wayne B. Colburn, Director, United States Marshals from Leon Ulman, Deputy Assistant Attorney General, Office of Legal Counsel, September 30, 1970, at 2-3.

them to Haiti. The President's authority to enter into executive agreements with foreign nations may be exercised either under Congressional authorization or the President's inherent authority. 8/ The President's power to enter into such agreements on his own authority can arise from "that control of foreign relations which the Constitution vests in the President as a part of the Executive function," 39 Op. Att'y Gen. 484, 486-7 (1941). 9/ The limits on Presidential power to enter into these agreements are not settled and have aroused controversy from the earliest days of our Republic. 10/

We believe that authority to enter into the Agreement is provided by two sources -- the power delegated by Congress to the President, through the Attorney General, to guard the borders, 8 U.S.C. § 1103(a), and the President's authority in the field of foreign relations. The arrest of Haitian citizens as an aid to Haiti's enforcement of its emigration laws will enable the President to curtail the flow of Haitians in the furtherance of his "power and duty to control and guard the borders against the illegal entry of aliens." Id. The breadth of the President's authority in the field of foreign relations is extremely broad, as illustrated by the numerous executive agreements that have been negotiated and upheld by the courts. 11/ See United States v. Pink, 315 U.S. 203 (1942) (Litvinov Agreement); United States v. Belmont, 301 U.S. 324 (1937) (same); Tucker v. Alexandroff, 183 U.S. 424, 435 (1901) (Mexican/United States agreement to permit both countries to cross the border in pursuit of marauding Indians) 12/; Dole v. Carter, 444 F. Supp. 1065, 1068-69 (D.Kansas), motion denied, 569 F.2d 1109 (10th Cir. 1977) (return of the Crown of St. Stephen).

8/ E. Corwin, The President's Control of Foreign Relations 116-17 (1917) (Corwin).

9/ Agreements executed by various Presidents for the settlement of claims of United States citizens against foreign governments are examples. See Dames & Moore v. Regan, 49 U.S.L.W. 4969 (July 2, 1981).

10/ E. Corwin, The President, 216-233 (3d ed. 1948) (debate between Hamilton and Madison over the constitutionality of Washington's Proclamation of Neutrality); L. Henkin, Foreign Affairs and the Constitution 177 (1972) (Henkin).

11/ Henkin, supra, at 179.

12/ 2 W. Malloy, Treaties, Conventions, International Acts, Protocols and Agreements 1144 (1910) (Malloy).

An agreement to aid the enforcement of the laws of another country is not without precedent. In 1891, the United States and Great Britain entered into an executive agreement prohibiting for one year the killing of seals in the Bering Sea. Modus Vivendi Respecting the Fur-Seal Fisheries in Behring Sea, 1 W. Malloy, Treaties, Conventions, International Acts, Protocols and Agreements 743 (1910) (Malloy). This agreement permitted the seizure of offending vessels and persons if "outside the ordinary territorial limits of the United States," by the naval authorities of either country. Id., Art.III. "They shall be handed over as soon as practicable to the authorities of the nation to which they respectively belong. . ." Id. As there was no statutory authority for this agreement, the President acted pursuant to his inherent authority in the field of foreign affairs.

Between 1905 and 1911, Presidents Roosevelt and Taft entered into a series of executive agreements that permitted the United States to operate the customs administration of both Santa Domingo (now the Dominican Republic) and Liberia. 13/

> [This first agreement] provided, in brief, for (1) a receiver of 'the revenues of all the customs houses,' to be designated by the President of the United States and satisfactory to the Dominican President; (2) the deposit in a New York bank for the benefit of creditors of all receipts above 45 percent, which was to be turned over to the Dominican Republic for the expenses of government administration and the necessary expenses of collection; and (3) the eventual distribution of the funds in the payment of Dominican debts.

W. McClure, International Executive Agreements 94 (1941). A customs administration in Haiti was established by treaty in 1915 but an elaborate series of executive agreements were signed "both extending and terminating various phases of American intervention and assistance in the financial, medical and military affairs of Haiti." 14/

Many authorities have noted that a President's exercise of his authority in this area is "a problem of practical statesmanship rather than of Constitutional Law." E. Corwin, The President's

13/ 1 Malloy, supra, at 418. See also M. McDougal & A. Lans, Treaties and Congressional-Executive or Presidential Agreements, 54 Yale L.J. 181, 279 (1945); N. Small, Some Presidential Interpretations of the Presidency 78-79 (1970). The arrangement was based on a fear that these countries' debts would be used by European countries as a grounds for military intervention.

14/ McDougal, supra, at 279. The final one was signed in 1934.

Control of Foreign Relations 120-21 (1917). 15/ The Supreme Court has upheld a variety of executive agreements based upon a number of theories and it is difficult to delineate with certainty the limits of the President's authority when he enters into such agreements based solely on his inherent executive authority. But see Reid v. Covert, 354 U.S. 1, 16-19 (1957)(agreement cannot deny civilian his right to a trial by jury). Because this Agreement will be based both on delegated and inherent authority, we believe that it is constitutional.

4. Obligations Under the Convention Relating to the Status of Refugees (Convention), 19 U.S.T. 6223, T.I.A.S. No. 2545: Article 33 of the Convention, to which the United States is a party, provides that "No Contracting State shall . . . return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." Individuals who claim that they will be persecuted for one of these reasons must be given an opportunity to substantiate their claims. The Convention does not, however, mandate any particular kind of procedure. We have reviewed the plan outlined in the draft Memorandum for Acting Commissioner Meissner from Associate Commissioner Carmichael (undated) and believe that it comports with the Convention.

5. Effect of the Foreign Assistance Act, 22 U.S.C. § 2151 et seq.: We know of no provision of the Act that would prohibit the interdiction, since no foreign aid funds are being used.

6. Formal implementation of the interdiction: There are three formal steps still to be taken before the interdiction can begin. The first is clearance of the Agreement by the Department of State. The second is the signing of the Agreement by the

15/ Commitment of financial resources overseas "depend[s] directly and immediately on appropriations from Congress . . . . While the issue of Presidential power to make executive agreements or commitments has no legal solution, political forces have mitigated its theoretical rigors. The President has to get along with Congress and with the Senate in particular, and he will not lightly risk antagonizing it by disregarding what it believes are its constitutional prerogatives." Henkin, supra, at 183-84. See also K. Holloway, Modern Trends in Treaty Law 216-17 (1967); McClure, supra, at 330; Restatement (Second) of the Foreign Relations Law of the United States §121 (1965).

United States and the Government of Haiti. 16/ The third is the issuance of a Proclamation by the President pursuant to 8 U.S.C. § 1182(f). The Proclamation would contain a finding that the entry of Haitian nationals who do not possess proper documentation for entry into the United States is detrimental to the interests of the United States. The Proclamation would then suspend the entry of all such Haitian nationals. If a decision is made not to rely upon 8 U.S.C. § 1182(f), no Proclamation is necessary. However, the validity of the President's action will certainly be strengthened by relying on both statutory provisions which provide support for the contemplated action.

The Coast Guard is presently under the authority of the Department of Transportation. 14 U.S.C. § 1. The Attorney General is in charge of enforcing the immigration laws. 8 U.S.C. § 1103. The Coast Guard will be enforcing both the immigration laws and the laws of Haiti pursuant to the Agreement. While a Memorandum of Understanding signed by the Coast Guard, INS, and the Department of State would facilitate operations, 14 U.S.C. § 141, a Presidential order to the Secretary of Transportation to have the Coast Guard act to enforce both parts of the Agreement will avoid any question about the Coast Guard's authority to act.

7. Coast Guard's authority to operate in Haitian waters: Under the Agreement Haiti will grant the Coast Guard permission to enter its waters to return Haitian nationals. The Coast Guard's authority to enter the waters will be pursuant to the Agreement. 17/ By permitting the Coast Guard to enter its waters, Haiti is granting free passage to our ships and crews. Sovereign nations often grant permission for the passage of foreign forces. Tucker v. Alexandroff, 183 U.S. 424, 435 (1901); Schooner Exchange v. M'Faddon, 11 U.S. 116, 139-40 (1812); 2 J. Moore, A Digest of International Law § 213 (1906). We suggest a modification to the Agreement to make it clear that Haiti will not exercise jurisdiction over the Coast Guard ships or her crews while they are in Haitian waters. Schooner Exchange, supra, at 140, 143.

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16/ The Agreement should be transmitted to Congress within sixty days. 1 U.S.C. § 112b(a) (Supp. III 1979).

17/ It will not be pursuant to 14 U.S.C. §89(a) because the waters of Haiti are not within the jurisdiction of the United States. United States v. Conroy, 589 F.2d 1258, 1265 (5th Cir. 1979). Section 89(a), however, does not limit the authority of the Coast Guard to act pursuant to another provision of law -- in this case, the Agreement. 14 U.S.C. § 89(c).

Prepared Statement of Bishop Anthony J. Bevilacqua, Chairman Ad Hoc Committee on Migration and Tourism National Conference of Catholic Bishops

Mr. Chairman and Members of the Subcommittee:

I am grateful for this opportunity to share with you the very deep concerns of the Catholic Church in the United States in matters relating to mass movements of people to seek asylum in this country. Our tradition as a haven for the unwanted and oppressed has been heralded throughout the history of this Nation. Events of the recent past, however, have presented new challenges which threaten the maintenance of that tradition. The response of our country to the phenomenon of a country of first asylum has fallen far short of the expectations of many of us. In this presentation we will make a number of positive suggestions directed at providing solutions to these new problems and hopefully ones leading to a restoration of our image as a natioh and people imbued with humanitarian concern for all mankind.

In any mass asylum scheme the total population will be divided into basically two groups, those who will be crossing our land or sea borders in large numbers and those already in the country having been admitted with temporary visas. Our initial remarks will relate to the former group for whom a comprehensive emergency preparedness plan must be developed. May we suggest such a plan include the following:

1. The designation of a specific agency to manage and coordinate the delivery of all services to the population. Permanent funding authorization must be incorporated into the enabling legislation to facilitate an immediate response to the emergency.

2. A plan for the initial reception, temporary care including shelter, and transportation to permanent relocation sites.

3. The designation of permanent processing centers in various parts of the United States. Such centers must be readily accessible by good transportation to relatives, legal counsel and voluntary agencies. Areas subject to extreme weather and temperature conditions should be avoided.

4. Health care and social services should include: (a) adequate facilities for medical examinations and treatment on the site as required; (b) establishing nutritional food programs related to the population's traditional diet; (c) unrestricted access to the centers for religious functionaries who

wish to administer to the spiritual needs of the people; (d) appropriate indoor as well as outdoor recreational activities; (e) the immediate establishment of English language classes and vocational training programs.

5. The right to representation by attorneys or representatives of recognized voluntary agencies and access to the population must be guaranteed. Since these services are customarily provided on a pro-bono basis, every effort should be made to expedite the processing of all applications filed thus saving time and money both for the government and counsel.

6. The asylum hearing process must be simple and expeditiously handled yet one which guarantees due processing of all applications. We endorse the concept of an asylum hearing officer, one who will be a specialist in the technique of interrogation (hopefully bilingual), well-versed in judicial procedures and applicable law and possessing an in-depth knowledge of the economic and political conditions of the country from which the aliens have fled. We envision certain geographical or political area specialists who will receive on-going orientation and training relating to changing world situations.

While recognizing and endorsing the need for streamlining the asylum hearing process, we must insist on the right to an administrative appeal from an adverse decision of the asylum officer. Such an appeal should be directed to an existing appelate body such as the Board of Immigration Appeals of the Justice Department or to a newly created Asylum Review Panel. The latter might be composed of representatives of the State and Justice Departments, the Office of the United Nations High Commissioner for Refugees, voluntary agencies or lawyers associations.

7. With the assurance of expeditious processing, provision must then be made for early release from detention of all who do not pose a clear threat to the security or welfare of the country. The treatment of all should reflect the humanitarian concern traditionally manifested by the United States for those seeking refuge here. That concern must also relate to the length of detention, a matter presently the subject of numerous judicial proceedings in our courts, an inappropriate setting, to our minds, for the determination of levels of compassion, hospitality or charity.

The conditions of release should not, however, relate to the posting of bonds. Release on one's own recognizance or parole to relatives, friends or voluntary agencies should be utilized.

8. Resettlement assistance must also be provided including financial assistance to voluntary resettlement agencies and financial, medical and

social services to the aliens where needed. Such assistance must be made available not only to those granted asylum but also to others who for one reason or another cannot be immediately removed from the United States and whose long-term detention is unnecessary or unwarranted for financial or humanitarian reasons. The Refugee Act of 1980 is deficient in this respect even for those persons granted asylum status. The needs of asylees, especially those who have arrived in a mass movement directly from their country are just as pressing as those processed abroad for entry as refugees.

We feel compelled to question the wisdom of undertaking a program of interdiciton of vessels suspected of transporting undocumented aliens to our shores. The possible violation of international law and protocol will not be addressed here. The potential, however, for violation of individual human rights and danger to human life is clearly evident and of the most serious concern to us. We draw no parallel between the interdiction of vessels carrying suspected contraband cargo and those transporting human beings. Are we to equate material goods with human life?

We must express also our fears of the adverse effect this U.S. interdiction policy will have on those fleeing oppression in Southeast Asia. Has the memory of those refugees being turned away only to suffer death by drowning and starvation been dimmed by the passage of time? Should this practice be resumed by the countries of first asylum, the United States, we fear, will not be persuasive as in the past in convincing those nations the practice should cease. Are we to abandon our role as the leader of the free world and defender of individual freedom?

There is need also to develop a policy and then a mechanism for assisting aliens stranded in the United States as a result of upheaval in their country of origin. Visitors, students, businessmen and other non-immigrants often find it impossible to make a decision regarding a return due to the uncertainty of the political or military situation at home. At the same time it is also impossible to maintain their lawful temporary status in the United States due to many factors including the cut-off of funding from abroad. Faced with this dilemma, many violate the terms of their entry by taking up unauthorized employment to sustain themselves or are forced to file applications for political asylum merely to gain time to await a stabilization of events in the home country. A clear policy should be enunciated.

We would like to call to your attention the September 17, 1981 Statement of the Administrative Board of the United States Catholic Conference on the

Status of El Salvadorean nationals temporarily residing in this country. It reads as follows:

> "We are deeply distressed that the conflict among opposing factions in El Salvador continues at a high level. As a result, thousands of persons have fled that troubled country and others have been stranded abroad fearing for their very lives should they return at this time.
>
> "In the United States these individuals daily face the threat of deportation by our government to El Salvador. Many are forced to apply for political asylum as the only means of seeking at least a temporary haven and unfortunately the vast majority of these applications are being denied.
>
> "It is our feeling that while their country remains in such a state of turmoil, the citizens of El Salvador who are stranded in the U.S. should not be forced to leave when their very physical well being, regardless of political philosophy, is in danger. We, therefore, urge that a moratorium be placed on all deportations to El Salvador, at least until such a time as the government in power is in a position to guarantee the safety of its citizens."

It is our recommendation that in times of national calamity, military or political upheaval abroad, the nationals of the affected countries stranded in the U.S. be granted temporary refuge until it is safe and possible for them to return home. In the interim, they should be granted permission, if requested, to take up employment so that they can sustain themselves in a lawful manner. Such a policy should react to a de facto situation abroad and should be implemented with the least possible delay.

While we seek the immediate adoption and implementation of these proposals, let us also urge that there be an awareness of the basic problems which are the causes of masses of peoples fleeing their countries of origin and residence.

I will conclude by quoting from a recent Statement of my Committee:

> "...there is...need for continued and accelerated efforts on the international scene, aimed at providing political and economic climates favorable to the prosperity and rights of individuals. The ultimate goal should be to insure opportunities for human beings to share in the bounty of the world wherever they live."

TESTIMONY ON MASS ASYLUM

by
The Lawyers Committee for International Human Rights

to the
Subcommittee on Immigration
Committee on the Judiciary
United States Senate

July 31, 1981

Mr. Chairman, the Lawyers Committee for International Human Rights appreciates the opportunity to present testimony to this Subcommittee. The Lawyers Committee is a public interest law center founded in 1975 by the Council of New York Law Associates and the International League for Human Rights.

For the past 3-1/2 years the Committee has worked extensively on U.S. refugee and asylum policy. Since 1978 the Committee has supervised volunteer lawyers in New York who have represented more than 150 applicants for asylum in the U.S. from 33 countries. During this period the Committee also has worked to promote due process rights of certain classes of asylum seekers, such as more than 10,000 Haitians in Florida who were targeted for expedited deportation by the Carter Administration in 1978, and certain Cubans who have been held in detention for an indefinite period in the last year because the Government of Cuba will not allow them to return.

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*/ The preparation of this testimony was undertaken by Matthew Walker and Jane Berger of the Lawyers Committee.

On a broader level since 1978 the Lawyers Committee has commented on various laws and administrative regulations pertaining to refugees and asylum, including various drafts of the Regugee Act of 1980. In August 1980 the Committee submitted extensive comments and recommendations on these issues to the Select Commission on Immigration and Refugee Policy.

Today this Subcommittee considers one highly important and difficult aspect of U.S. policy, the proper handling of mass claims for political asylum. The mass evacuation of Vietnam in 1975, the expulsion of Indochinese boat people from Vietnam beginning in 1977 and the influx of more than 165,000 Cubans and Haitians since the spring of 1980 have highlighted the very serious problems in this area and prompted extensive national debate as to the proper U.S. approach. This debate is colored by considerations of national, political and economic security as well as humanitarian concerns. We must endeavor to provide refuge to as many people as possible who are genuinely fleeing persecution while protecting the economic and social well-being of this country on both a national and local level.

In the coming months it will be the task of this Subcommittee to consider these factors and to suggest the best possible balance among these interests.

Our greatest concern is that, in confronting the myriad of problems posed by mass asylum, neither this Committee, nor the Administration lose sight of the needs of the individual applicant for political asylum or the individual refugee fleeing persecution. It may be that a large number of those taking part in a mass exodus are not refugees under the international standard adopted by the United States. Some individuals, however, will be bona fide refugees. We must not let our genuine concern for controlling immigration interfere with our legitimate desire to let those who are refugees into our country. Thus as we consider ways in which we can make the asylum procedure efficient, we must also ensure that they are just and humane; and while we need to be duly selective in admitting refugees we must also take the necessary steps to abide by our international and constitutional legal obligations as well as our humanitarian ideals.

Considering these basic principals, our statement seeks to: (1) analyze some of the Administration's tentative approaches to the problem of mass asylum; (2) present our comments and recommendations regarding these proposals; and (3) present a series of recommendations for reforms of the present system. Special focus also will be given to the international role in this process.

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THE REAGAN ADMINISTRATION PROPOSALS

Mr. Chairman, we have been deeply concerned in recent weeks by the initial response of the Reagan administration to these problems. Particularly disturbing is the Administration's apparent willingness to drastically curtail basic due process protections, which we believe are guaranteed to all asylum applicants by our constitution, as a means of improving the efficiency of the process. Regretably, the Administration has sought to fashion an overall refugee and asylum policy in response to recent emergency situations. Specifically, the Administration has raised the twin options of interdiction (apprehending potential detainees on the high seas) and the prolonged mass detention of potential asylees pending adjudication of their applications. Such drastic policy options fly in the face of the constitution and also violate Articles 1, 3, 7, 8, 16, 31, 32 and 33 of the U.N. Convention Relating to the Status of Refugees to which the U.S. is bound by virtue of its ratification of the U.N. Protocol Relating to the Status of Refugees in 1968.

A third major area of concern involves various proposals to streamline existing regulatory provisions in asylum cases. Such proposals are intended to minimize the role of legal counsel; limit appeals; remove immigration judges from consideration of most cases; and disqualify certain individuals from even applying for asylum. While we recognize inadequacies in the current system, and the inefficiency and delay that has often characterized that system, such measures are not an acceptable alternative.

OUR REACTIONS AND CONCERNS TO THESE PROPOSALS

Considered together, the Administration's program constitutes an overly simplistic and we believe ineffectual response to a complex set of problems. In so doing, it establishes procedures that systematically violate the notions of fundamental fairness which underlies our judicial system and which are the basis for the Refugee Act of 1980 and the U.N. Convention and Protocol relating to the Status of Refugees.

We recognize the pressures caused in recent years by the influx of tens of thousands of illegal entrants who

are now seeking asylum. We also recognize the obvious need for effective controls in the number of people emigrating to this country. Nor do we question the resultant burdens that have been placed on existing resources in this country. Yet it is also necessary that we remember that we are talking about human beings who often are threatened by the prospect of torture, imprisonment or death if they are forced to return home. These individual refugees deserve and are entitled to a full and fair hearing, right to counsel and the right to appeal their cases if mistakes have been made in the administrative application process. In short, our desire to control the number of admissions, and to expedite the asylum review process cannot justify the flagrant denial of basic due process protections in individual cases.

Mr. Chairman, let us examine each of the proposed "reforms" in the asylum process. The first suggestion is that we institute a program of interdiction (the intercepting of boats carrying refugees on the high seas and returning them home). We believe that as a practical matter interdiction will not work. It will be tremendously expensive, dangerous, and largely ineffectual. Such a policy is contrary to any humanitarian ideals relating to the status of refugees and aliens to which this country aspires. Moreover, we believe that interdiction

violates Article 33 of the Convention which plainly states:

> No contracting state shall expel or return a refugee in any manner to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

A policy of mass interdiction of boats from particular countries, designed to prevent people from reaching our shores and applying for political asylum violates the spirit if not the letter of the U.N. Convention, as well as the Refugee Act of 1980. On a practical level, interdiction will divert the Coast Guard from performing its routine duties such as search and rescue missions, and drug enforcement, thus jeopardizing the safety of those who are otherwise protected. The act of interdiction could and probably will lead to dangerous confrontations where refugees, in their desperation, would jump overboard or violently confront Coast Guard officials; the incentive behind a refugee who is running from persecution -- the prospect of torture or life imprisonment -- must not be underestimated. The temptation for them to go underground and to use surreptitious means to gain entry would be that much greater. Undoubtedly many more refugees would suffer gross mistreatment by their human smugglers if the policy of interdiction were established. Finally, interdiction is an attempt to find a simple and dramatic solution for a difficult set of problems.

A second component of the Administration's tentative mass asylum plan involves the creation of long-term detention centers. One assumption behind the institution of such centers is that they will discourage future entrants from coming to the U.S. by preventing or greatly delaying such asylum applicants from being integrated into the society, thus denying them economic opportunities as well as a chance to freely participate in life in this country. Again, this will not deter a refugee who is fleeing for his basic freedoms.

Recent experience clearly demonstrates that successful utilization of detention camps will be exceedingly difficult. INS treatment of Haitians and Cubans at the Krome detention facilities in South Florida has been completely inadequate. At Krome detainees are now being held in sub-standard, unsanitary conditions, which are now being challenged in a federal court in Florida. A similar suit in New York has challenged general conditions at the permanent INS detention facility in Brooklyn.

The creation of these camps, under U.S. auspices, raises a number of other very serious problems. Congressman

Robert McClory has raised three points of opposition to the use of permanent detention facilities in these cases:

> First, they would entail creation of a bureaucracy which would depend for its continuing existence on a flow of refugees or asylees. Second, they would be a sign to all those who might seek asylum that the United States is ready and willing to help, without considering the share that must be borne by the rest of the world community to house and deal with refugees and asylees. Third, they would encourage people to come here without proper screening, before sufficient resettlement plans had been undertaken. (Final Report of the Select Commission on Immigration and Refugee Policy, at 374).

Yet another set of concerns relate to the potential denial of certain constitutional due process protections. If the detention camps are located in isolated communities, inaccessible to lawyers and voluntary agency representatives, it will be extremely difficult to provide adequate counsel to applicants in the preparation of their requests for asylum and in the processing of their claims. Detention facilities, where applicants are forced to live under adverse conditions for an undetermined period of time (perhaps months) is an extremely harsh, ineffectual and counter-productive response to a complex set of problems that will not be solved quickly or simply.

In many individual cases, this policy may be in violation of Article 21 of the Convention which states:

> Housing. As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Moreover, the Administration has advanced no rational argument to suggest why applicants for political asylum ought to be treated less favorably than any other aliens applying for residence, on grounds of family relationships or special job skills.

The third element of the Administration's response to mass asylum is a restructuring of administrative procedures governing asylum applications. Considered together these procedural changes seem designed to eliminate various due process protections in an effort to make the process less complicated and more expeditious. Thus for example the right to appeal a denial of asylum would be severely curtailed on the grounds that such rights only serve to prolong the already lengthy process. Elimination of these appeals would greatly jeopardize the chances of proper resolution in a number of cases. By eliminating a full evidenciary hearing, the Administration's proposal denies the opportunity to present testimony and other evidence which is necessary to a fair, well-considered decision.

Similarly the idea of grouping cases together and deciding them on the basis of a country profile creates the potential for superficial and erroneous judgements in many individual cases. Under current procedures, each applicant must show that he or she would be "subject to or has a well-founded fear of persecution," and in each case a determination is made as to whether an individual would be singled out for persecution. To group thousands of these cases together would be simultaneously overinclusive and underinclusive -- those who do not necessarily deserve asylum could be granted it categorically; while some of those who may well deserve asylum would be denied. Therefore, it should be made clear that while such a suggestion minimizes the effort and paper-work in such cases it simultaneously minimizes our ability to be just and selective in deciding them.

Generally, the utility of group profiles depends entirely on how and by whom they are prepared. If a Refugee and Asylum Review Board is created encompassing governmental and nongovernmental experts, it may be able to synthesize various bits of relevant information. The Refugee and Asylum Review Board, if comprised of nongovernmental as well as governmental experts, may be in a position to gather information from a variety of sources and to synthesize it into objective group profiles. However, if this responsibility is

left with the Coordinator for Refugee Affairs, the profiles will reflect the political philosophy and foreign policy outlook of whatever administration is in power.

In debating this proposal the Select Commission Report noted that

> Profiles issued by the Department of State might be effected, in the view of some Commissioners, by the international politics of the moment and the profiles themselves might lack credibility. (Report at 173)

In an apparent effort to address this concern the Commission Report urges that the U.S. coordinator's office (which would be moved from the State Department to the White House) undertake the profiles.*/ This distinction is not meaningful. A similar perspective, tied closely to foreign policy objectives, will emerge from either the State Department or the White House based Refugee Coordinator's office.

The third means of expediting the application involves limitations placed on the role of the applicant's

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*/ Secretary of State Muskie apparently disagreed. In his comments he stated:

> I strongly believe that the Department of State should be responsible for the preparation and distribution of the profiles since the Department is the most competent to assess conditions in foreign countries and most experienced in reviewing and formulating advisory opinions relating to asylum requests. (Report at 380)

counsel. At present a lawyer often serves to help the applicant focus on what is relevant, and to describe the situation that has resulted in a fear of persecution. This process is often very difficult for the asylum applicant. Chapter IV of the UNHCR handbook describes this problem:

> A refugee often tells his story in non-political terms. Some refugees are politically inarticulate in the sense of not being able to express their political views though they may have very definite opinions for which they have had to suffer. Others do not wish to discuss politics because they have had too much of it and prefer not to be personally involved. There are also some who are afraid to say what they think. In such latter cases their silence may well be the result of fear of persecution and it may be necessary to reveal the applicant's psychological attitudes by indirect questioning without the use of political terms or such technical expressions as "fear" and "persecution". (Eligibility Guide, UNHCR, March 1962, at 67).

In such cases refugees particularly need the advice and support of an attorney. Counsel may also assist in presenting evidence and conducting cross-examination at the hearing. Finally, and perhaps most importantly, the expertise of a lawyer is often vital in the preparation of the application for asylum (I-589) including the organization of affidavits and documented evidence so that the client is as fairly represented as possible; such materials are often difficult to obtain and a refugee who has recently run for his life may be unable to do so.

OUR RECOMMENDATIONS

We share the Administration's concern about the lack of control and inefficiency in our current asylum policy. In response to these problems we suggest that several basic policies be implemented which will improve and expedite the asylum process and assure adequate due process protection for asylum applicants. Specifically we recommend that Congress: (1) maintain the definition of "refugee" as is established in the U.N. Convention and the Refugee Act of 1980; (2) limit the time consuming and inefficient role of the State Department in many cases; (3) institute the position of Political Asylum Coordinator at INS and develop a comprehensive training program for them; and (4) simplify the application process, including the immigration form I-589.

In its reaction to the recent mass influx and nationwide concern about the number of refugees flooding to the U.S., it is too easy to lose sight of the context in which asylum decisions should be made. This context is rooted in the universal and non-discriminatory defintion of "refugee" that adopts the language of the United Nations Convention and appears in the Refugee Act of 1980:

> ...any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person has habitually resided, and who is unable or unwilling to

> return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. (Section 207(a))

This definition was specifically endorsed by the Select Commission on Immigration and Refugee Policy which concluded:

> By emphasizing persecution and the fear of persecution without regard to national origins, the Refugee Act establishes criteria based on special humanitarian concerns. The Act thus provides needed flexibility in defining refugee status in accordance with a universal standard that is not bound by specific ideological or geographic criteria which were used in earlier definitions. (U.S. Immigration Policy and the National Interest at 158).

Another important source of such information is the State Department's advisory opinion; unfortunately, with the great number of applications and the subsequent backlog of paper work the mandatory consultation with the Bureau for Human Rights and Humanitarian Affairs is a major source of delay. We believe that clearly meritorious cases need not be referred to the BHRHA. Given the problems of staff size and budgetary constraints, the BHRHA cannot consider every application for asylum in the country. Mandatory reference of clearly meritorious cases will detract from the State Department's consideration of truly difficult cases,

encourage district directors to shift responsibility for decision-making, and unnecessarily burden the administrative process. However, the district officers should be required to report their determination of all asylum cases to the BHRHA. This would allow the State Department to monitor treatment of asylum applicants throughout the country without participating directly in each decision. If they determine that certain cases were being mishandled, they would have the authority to intervene and make the necessary suggestions. A second class of cases where INS has doubts or factual questions would continue to be referred to the State Department for their advisory opinions.

We believe that UNHCR could be involved in expediting the handling of a third class of cases, those which are determined to be frivolous by INS. Part of the mandate of the UNHCR calls for cooperation with governments in the application of the Protocol and the Convention. In situations involving a large number of people coming into the United States, the UNHCR is capable of playing a crucial role in determining whether an individual has the basis for a valid claim of refugee status.

In cases that are deemed frivolous by INS, we propose that the office of UNHCR could act in an appellate function. It would conduct a review of the record in each case and if there

is agreement with the INS that the case is frivolous, the person would be subject to immediate deportation proceedings. If, as may occasionally happen, UNHCR disagrees with the INS and concludes that a case has merit, or needs further information, it would be referred to the State Department for an advisory opinion.

With more than 30 years of experience, UNHCR should be able to review the records of those applying for refugee status with considerable efficiency. With the aid of the UNHCR, the rights of bonafide refugees can be preserved while efficiently and fairly weeding out those who do not have a meritorious case.

Other necessary improvements are called for within the INS District Offices themselves. To ensure that applicants receive the sympathetic assistance necessary to a fair resolution of their claims, asylum cases should be separated out from routine immigration cases and handled by specially trained officials. The practice of considering asylum cases under routine immigration procedures ignores the unique and often complex nature of these cases. In so doing, it often jeopardizes the rights of aliens to present effectively their claims for asylum.

In the larger district offices, this may require the appointment of an Asylum Officer/Coordinator. The need for coordination at a supervisory level is particularly apparent

in a large district office such as New York, where an unwieldy administrative structure often creates additional problems. As a matter of course, these cases are transferred repeatedly within a district office, resulting in lengthy delays, general confusion, and, all too often, loss or misplacement of files. In Section V B.4 of their most recent Final Report, the Select Commission supported such a proposal by saying:

> The Select Commission recommends that the position of asylum admissions officer be created within the Immigration and Naturalization Service. This official should be schooled in the procedures and techniques of eligibility determinations. Area experts should be made available to these processing personnel to provide information on conditions in the source country, facilitating a well-founded basis for asylum determinations.
>
> ...
>
> The Select Commission believes that expeditious, equitable and uniform decisions on asylum petitions require special training for those officers who must make asylum determinations.

The Coordinator would supervise all aspects of asylum cases within each office, and would also maintain ongoing communications with the State Department. Before beginning their assignments, every supervisor would undergo extensive training as to existing laws and regulations relating to asylum and current State Department and UNHCR practices. Each asylum supervisor would also be required to be familiar

with recent directives affecting various groups of aliens, and would work with the investigators assigned to conduct Section 208 interviews. Finally, the Coordinator would conduct an in-house training program designed to help officials deal with the particular problems involved in gathering information from refugees, many of whom have suffered persecution and physical abuse.

INTERNATIONAL COOPERATION

In analyzing the problem of mass asylum, it is apparent that this country cannot work alone towards the resettlement of refugees. At each step in this process the U.S. needs to actively consider the need for international coordination and cooperation in responding to the needs of over 15 million refugees worldwide. In order to help facilitate a coordinated international response, we believe that the United States should continue to work with the United Nations High Commissioner for Refugees. The Office of the High Commissioner, having been involved in humanitarian affairs for 30 years, has special expertise on current refugee conditions, and effective methods of resettlement. It is also the most authoritative body in interpreting the various refugee treaties and agreements. Several of our allies, including Canada and Australia have formally incorporated UNHCR into their domestic review process. (See Appendix A)

Future discussions in this country need to consider the proper role for UNHCR in the handling of prospective mass asylum situations. In addition to UNHCR, in the past year the United Nations General Assembly and its Commission on Human Rights have taken unprecedented steps in attempting to address these problems. Last year the General Assembly adopted a Canadian proposal noting the relationship between patterns of mass exodus and human rights. (See Appendix C). The office of the U.N. Secretary-General is now preparing a report on this subject.

A second resolution, stressing the need for international cooperation to avert new flows of refugees, was brought to the General Assembly by the German Government. It will also be considered at the U.N. General Assembly session which will convene in September.

CONCLUSION

In this testimony we have summarized several principal Administration proposals, all of which are still being formulated:

1. Interdiction of boats carrying refugees on the high seas;

2. Detention of potential asylees pending adjudication of their applications; and

3. Expedition of the asylum application process by means of

   i. limiting the right to appeal;

   ii. considering certain classes of applications together; and

   iii. limiting the role of counsel.

After carefully analyzing these proposals, we conclude:

1. Interdiction would be expensive, dangerous and in violation of the U.N. Convention Relating to the Status of Refugees. Moreover, the Coast Guard would be diverted from their other duties.

2. Detention centers tend to be overcrowded and unsanitary. The existence of such centers would actually serve as an incentive to some unqualified refugees and encourage them to come to this country. Refugees with valid claims would be isolated and deprived of access to legal counsel. For those asylum applicants who are in status, these facilities would violate Article 21 of the U.N. Refugee Convention.

3. Expedition: Various proposals designed to streamline the asylum application process violate the basic due process rights of those applying for asylum.

In designing any system for the handling of emergency mass asylum claims, it is necessary to:

i. Provide for an adequate appeals process;

ii. Make provisions for consideration of particular factors in individual asylum claims; and

iii. Allow for, and inform applicants of their right to legal counsel.

In order to expedite the handling of mass asylum claims while maintaining the fundamental fairness of the process, we propose that the U.S. should:

1. Maintain the current definition of "refugee", which incorporates the existing U.N. standard.

2. In certain cases the role of the State Department should be dramatically curtailed. All clearly meritorious cases should be decided on directly by INS. Clearly frivolous cases should be referred to UNHCR for review. Only doubtful cases would be referred to the State Department for an advisory opinion.

3. Institute the position of asylum coordinators in local INS offices and develop a comprehensive training and educational program.

4. In considering the issue of mass asylum, the U.S. needs to actively consider the need for international coordination and cooperation, and must work with the Office of the United Nations High Commissioner.

APPENDIX A

The Canadian Experience

Refugees in Canada are handled by the Canada Employment and Immigration Commission (CEIC 1977), formerly the Department of Manpower and Immigration (1966), which has a Refugee Section and a Refugee Status Advisory Committee.[1] The Commission is assisted by other government departments and voluntary agencies when necessary.[2]

The basis of Canadian refugee policy is the Immigration Act which came into effect on April 10, 1978, and which..."replaced entirely the former legislation on the subject.:[3] It reiterated the Canadian commitment to a non-discriminatory policy of admission, and recognized "convention refugees" as defined by the United Nations Convention Relating to the Status of Refugees of 1951, and the United Nations Protocol Relating to the Status of Refugees of 1967. The Act also granted the Minister of Immigration the right "to admit applicants by permit," [4] and to announce annual immigration figures afterrconsultation withtthe Parliament.[5] It gan granted the Governor-in-Council (Cabinet) the right to pass regulations concerning immigrants, and to admit persons, who although not convention refugees, could be admitted in "accordance with Canada's humanitarian tradition with respect to the displaced and persecuted"[6]. As of January 1979, a Special Review Committee has been created to deal with these persons. For example, persons who have been denied refugee status; who are fleeing war, political

conflicts or natural disasters; or whose admission is in accordance with Canada's commitment to family reunification.—/

The procedure for determination of Refugee Status (asylum) as set out by the Act is as follows: During an inquiry by an immigration judge ("adjudicator") to determine if a person should be removed from Canada, if the person files for convention refugee status, thenthe inquiry is discontinued until the determination of status can be made. The person who had made the claim is interviewed by a senior immigration officer. This is called an "examination under oath." During this interview the person is allowed to be represented by counsel (although at his own expense), and to present evidence and the reasons why he fears returning to this country. The transcript of this interview is then sent to the Minister of Immigraiton, and a copy is sent to the claimant, who has 2-4 weeks to make additions, corrections, etc. The Minister sends the transcript to the Refugee Status Advisory Committee, and upon their advice (which he or she usually accepts), determines-the status of the person. The Minister appoints the members of this committee - which is comprised of 3 governmental representatives (including one from immigration, one from external affairs) and 3 non-governmental representatives (one from each of the churches, labor movement, and social services). The UNHCR also sits on the Committee "in an advisory capacity." Cases are decided by a simple majority, but because of the number of cases,

the Committee may divide itself to decide some cases.[/]

Once the decision has been made, the Minister of Immigration informs the senior immigration officer and the claimant of the decision. If the decision is negative, the inquiry is resumed and a departure notice is issued, unless the person appeals within seven days to the Immigration Appeal Board.[/] If the decision is positive, the adjudicator must still make the final d decision as to whether the person is a convention refugee. If the applicant qualifies he or she is allowed to remain in Canada and is issued a Minister's permit, unless he or she has a criminal record or is considered a terrorist, etc. (Sec. 19, 27 of Act).

In the appeal to the Board, the asylum claim is accompanied by the transcripte of the original interview, and by the declaration of the claimant under oath - which outlines the nature of the application, facts about the case, evidence to be used at trial, etc. If Board believes claim can be established, they allow the person an oral hearing; if not then the decision is final, with no other appeals except on points of law. The Board, at the request of the person or the Minister can give reasons for its decision.

Even if a person meets requirements for "convention refugee", he must still meet other requirements - i.e., such as the availability of financial assistance.[/] Refugees can also be excluded if there

The Australian Experience

Immigration in Australia is handled by the Department of Immigration and Ethnic Affairs (DIEA), which also handles citizenship and settlement services. The DIEA is helped in the handling of refugees by the Standing Interdepartmental Committee of Refugees (SICR), the Determination of Refugee Status Committee (DORS) (created in 1977 in response to the UNHCR Executive Committee's recommendation that all countries should "establish procedures for the determination of refugee status"), and the Refugee Section of DIEA itself. (pp. 1-2 "Procedure for Determination of Claims to Refugee Status in Australia).[/] The SICR is composed of officers of the DIEA, Prime Minister and Cabinet, Employment and Industrial Relations, Social Security and Education. It works with "voluntary agencies", makes recommendations concerning refugees to the Minister of Immigration and Ethnic Affairs, and " 'regularly reviews the intake of refugees against Australia's capacity to ensure successful resettlement.' "[/] Reflecting a concern for "public participation," Australia "has had long experience of Advisory Councils in this field."[/] The Australian Population and Immigration Council (APIC), "the major consultative body in Australia on all aspects of population and immigration policy", and the Australian Ethnic Affairs Council represent two of these.[/]

The basis of Australian immigration policy is the Immigration Act of 1958, which grants "very substantial discretionary power in the Minister".[/] Australia has not written the 1951 United Nations Convention and 1967 United Nations Protocol into its laws, although it has ratified them. As in Canada, there was a review of Australian Immigration policies in the early '70's. The Galbally Review of 1977-78 resulted in the Prime Minister accepting the recommendations of the Review and allocating an extra $50 million for immigrant services over the following three years. APIC conducted a review of policy, which was published as a Green Paper (1977). Based on this Green Paper, the following changes in immigration policy were incorporated:

A. "A more structured and organized approach to the selection of immigrants involving a points system very like that of Canada"

B. "Three year rolling programs to replace the annual immigration targets of the past, with an average net intake of 70,000 a year during the first three-year period 1978-81"

C. A reiteration of the Australian commitment to a non-discriminatory policy of admissions.

Unlike Canada, Australia has made entrance requirements more lenient for refugees. Whereas in Canada a person who is recognized as a "convention refugee" must meet the same requirements as other immigrants, in Australia these requirements are

waived. The Green Paper states, "the current policy is administered flexibly in cases where there are compelling compassionate of humanitarian factors." (Immigration Policies and Australia's Population - APIC - A Green Paper - Parliamentary Paper No. 41/1977, p. 31). Australia incorporates into practice a broader definition of "refugee" than that found in the United Nations Convention and Protocol. For example, it included people inside their country of residence who fear persecution, and persons fleeing armed conflicts. The Green Paper notes "Many countries, including Australia, also recognise that people can be in a refugee-type situation and merit sympathetic consideration although their status has not been officially recognized by the UNHCR." (p. 39 - Green Paper). Australia determines the number of refugees to be accepted on the basis of its ability to resettle them. It provides free language training, and other services. Determination for admission as based on:

1. "degree of relationship to a resident of Austraila"
2. "level of demand for skills and qualifications..."
3. "humanitarian considerations." (p. 97 - Green Paper)

The procedure for determination of refugee status (asylum) is as follows: (taken from "The Procedure for Determination

of Claims to Refugee Status in Australia").

First an application for asylum does not result in a difference in treatment from refugees admitted from abroad. The application can be made upon arrival, after arrival, or during deportation proceedings. On the basis of 1977 regulations, the claimant is interviewed by officers "at the state level of the DIEA." The person is allowed to have counsel present, and is interviewed about his reasons for making the claim. The transcript of the interview is to be approved by the claimant, who signs it, and is then forwarded to the DORS Committee, which makes recommendations as to refugee status to the Minister of Immigration and Ethnic Affairs.

The DORS Committee is composed of an officer of the DIEA, who chairs the committee, the Attorney General, Prime Minister and Cabinet, and a representative of the UNHCR in Australia who sits as an observer. The committee makes it decision by majority vote, and it amy make a decision on the case or may "defer it for further inquiries." (p. 3) Also, "the Committee is expressly empowered to recommend that an applicant whose claim to refugee status is rejected should nevertheless be allowed to remain temporarily or permanently in Australia

on humanitarian or compassionate grounds." (p. 3) A person may not be deported to a country where his life would be endangered.

There is no right to appeal the DORS decision, but the Minister may refer the decision back to the DORS Committee if new information is submitted. Under the Administrative Appeals Tribunal Act of 1975, a person can appeal a deportation decision, but only in criminal and other specified cases.

APPENDIX B

OFFICE OF THE
UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

HANDBOOK ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS

under the 1951 Convention and the 1967 Protocol
relating to the Status of Refugees

Geneva, September 1979

"As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

This general definition is discussed in detail below.

B. Interpretation of terms

(1) "*Events occurring before 1 January 1951*"

35. The origin of this 1951 dateline is explained in paragraph 7 of the Introduction. As a result of the 1967 Protocol this dateline has lost much of its practical significance. An interpretation of the word "events" is therefore of interest only in the small number of States parties to the 1951 Convention that are not also party to the 1967 Protocol.[5]

36. The word "events" is not defined in the 1951 Convention, but was understood to mean "happenings of major importance involving territorial or profound political changes as well as systematic programmes of persecution which are after-effects of earlier changes".[6] The dateline refers to "events" as a result of which, and not to the date on which, a person becomes a refugee, not does it apply to the date on which he left his country. A refugee may have left his country before or after the datelines, provided that his fear of persecution is due to "events" that occurred before the dateline or to after-effects occurring at a later date as a result of such events.[7]

(2) "*well founded fear of being persecuted*"

(a) General analysis

37. The phrase "well-founded fear of being persecuted" is the key phrase of the definition. It reflects the views of its authors as to the main elements of refugee character. It replaces the earlier method of defining refugees by categories (i.e. persons of a certain origin not enjoying the protection of their country) by the general concept of "fear" for a relevant motive. Since fear is subjective, the definition involves a subjective element in the person applying for recognition as a refugee. Determination of refugee status will therefore primarily require an evaluation of the applicant's statements rather than a judgement on the situation prevailing in his country of origin.

38. To the element of fear—a state of mind and a subjective condition—is added the qualification "well-founded". This implies that it is not only the

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[5] See Annex IV.

[6] UN Document E/1618 page 39.

[7] *loc. cit.*

frame of mind of the person concerned that determines his refugee status, but that this frame of mind must be supported by an objective situation. The term "well-founded fear" therefore contains a subjective and an objective element, and in determining whether well-founded fear exists, both elements must be taken into consideration.

39. It may be assumed that, unless he seeks adventure or just wishes to see the world, a person would not normally abandon his home and country without some compelling reason. There may be many reasons that are compelling and understandable, but only one motive has been singled out to denote a refugee. The expression "owing to well-founded fear of being persecuted"—for the reasons stated—by indicating a specific motive automatically makes all other reasons for escape irrelevant to the definition. It rules out such persons as victims of famine or natural disaster, unless they *also* have well-founded fear of persecution for one of the reasons stated. Such other motives may not, however, be altogether irrelevant to the process of determining refugee status, since all the circumstances need to be taken into account for a proper understanding of the applicant's case.

40. An evaluation of the *subjective element* is inseparable from an assessment of the personality of the applicant, since psychological reactions of different individuals may not be the same in identical conditions. One person may have strong political or religious convictions, the disregard of which would make his life intolerable; another may have no such strong convictions. One person may make an impulsive decision to escape; another may carefully plan his departure.

41. Due to the importance that the definition attaches to the subjective element, an assessment of credibility is indispensable where the case is not sufficiently clear from the facts on record. It will be necessary to take into account the personal and family background of the applicant, his membership of a particular racial, religious, national, social or political group, his own interpretation of his situation, and his personal experiences—in other words, everything that may serve to indicate that the predominant motive for his application is fear. Fear must be reasonable. Exaggerated fear, however, may be well-founded if, in all the circumstances of the case, such a state of mind can be regarded as justified.

42. As regards the objective element, it is necessary to evaluate the statements made by the applicant. The competent authorities that are called upon to determine refugee status are not required to pass judgement on conditions in the applicant's country of origin. The applicant's statements cannot, however, be considered in the abstract, and must be viewed in the context of the relevant background situation. A knowledge of conditions in the applicant's country of origin—while not a primary objective—is an important element in assessing the applicant's credibility. In general, the applicant's fear should be considered well-founded if he can establish, to a

reasonable degree, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the definition, or would for the same reasons be intolerable if he returned there.

43. These considerations need not necessarily be based on the applicant's own personal experience. What, for example, happened to his friends and relatives and other members of the same racial or social group may well show that his fear that sooner or later he also will become a victim of persecution is well-founded. The laws of the country of origin, and particularly the manner in which they are applied, will be relevant. The situation of each person must, however, be assessed on its own merits. In the case of a well-known personality, the possibility of persecution may be greater than in the case of a person in obscurity. All these factors, e.g. a person's character, his background, his influence, his wealth or his outspokenness, may lead to the conclusion that his fear of persecution is "well-founded".

44. While refugee status must normally be determined on an individual basis, situations have also arisen in which entire groups have been displaced under circumstances indicating that members of the group could be considered individually as refugees. In such situations the need to provide assistance is often extremely urgent and it may not be possible for purely practical reasons to carry out an individual determination of refugee status for each member of the group. Recourse has therefore been had to so-called "group determination" of refugee status, whereby each member of the group is regarded *prima facie* (i.e. in the absence of evidence to the contrary) as a refugee.

45. Apart from the situations of the type referred to in the preceding paragraph, an applicant for refugee status must normally show good reason why he individually fears persecution. It may be assumed that a person has well-founded fear of being persecuted if he has already been the victim of persecution for one of the reasons enumerated in the 1951 Convention. However, the word "fear" refers not only to persons who have actually been persecuted, but also to those who wish to avoid a situation entailing the risk of persecution.

46. The expressions "fear of persecution" or even "persecution" are usually foreign to a refugee's normal vocabulary. A refugee will indeed only rarely invoke "fear of persecution" in these terms, though it will often be implicit in his story. Again, while a refugee may have very definite opinions for which he has had to suffer, he may not, for psychological reasons, be able to describe his experiences and situation in political terms.

47. A typical test of the well-foundedness of fear will arise when an applicant is in possession of a valid national passport. It has sometimes been claimed that possession of a passport signifies that the issuing authorities do not intend to persecute the holder, for otherwise they would not have issued a passport to him. Though this may be true in some cases, many

persons have used a legal exit from their country as the only means of escape without ever having revealed their political opinions, a knowledge of which might place them in a dangerous situation vis-à-vis the authorities.

48. Possession of a passport cannot therefore always be considered as evidence of loyalty on the part of the holder, or as an indication of the absence of fear. A passport may even be issued to a person who is undesired in his country of origin, with the sole purpose of securing his departure, and there may also be cases where a passport has been obtained surreptitiously. In conclusion, therefore, the mere possession of a valid national passport is no bar to refugee status.

49. If, on the other hand, an applicant, without good reason, insists on retaining a valid passport of a country of whose protection he is allegedly unwilling to avail himself, this may cast doubt on the validity of his claim to have "well-founded fear". Once recognized, a refugee should not normally retain his national passport.

50. There may, however, be exceptional situations in which a person fulfilling the criteria of refugee status may retain his national passport—or be issued with a new one by the authorities of his country of origin under special arrangements. Particularly where such arrangements do not imply that the holder of the national passport is free to return to his country without prior permission, they may not be incompatible with refugee status.

(b) Persecution

51. There is no universally accepted definition of "persecution", and various attempts to formulate such a definition have met with little success. From Article 33 of the 1951 Convention, it may be inferred that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution. Other serious violations of human rights—for the same reasons—would also constitute persecution.

52. Whether other prejudicial actions or threats would amount to persecution will depend on the circumstances of each case, including the subjective element to which reference has been made in the preceding paragraphs. The subjective character of fear of persecution requires an evaluation of the opinions and feelings of the person concerned. It is also in the light of such opinions and feelings that any actual or anticipated measures against him must necessarily be viewed. Due to variations in the psychological make-up of individuals and in the circumstances of each case, interpretations of what amounts to persecution are bound to vary.

53. In addition, an applicant may have been subjected to various measures not in themselves amounting to persecution (e.g. discrimination in different forms), in some cases combined with other adverse factors (e.g. general atmosphere of insecurity in the country of origin). In such situations, the

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various elements involved may, if taken together, produce an effect on the mind of the applicant that can reasonably justify a claim to well-founded fear of persecution on "cumulative grounds". Needless to say, it is not possible to lay down a general rule as to what cumulative reasons can give rise to a valid claim to refugee status. This will necessarily depend on all the circumstances, including the particular geographical, historical and ethnological context.

(c) Discrimination

54. Differences in the treatment of various groups do indeed exist to a greater or lesser extent in many societies. Persons who receive less favourable treatment as a result of such differences are not necessarily victims of persecution. It is only in certain circumstances that discrimination will amount to persecution. This would be so if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on his right to earn his livelihood, his right to practise his religion, or his access to normally available educational facilities.

55. Where measures of discrimination are, in themselves, not of a serious character, they may nevertheless give rise to a reasonable fear of persecution if they produce, in the mind of the person concerned, a feeling of apprehension and insecurity as regards his future existence. Whether or not such measures of discrimination in themselves amount to persecution must be determined in the light of all the circumstances. A claim to fear of persecution will of course be stronger where a person has been the victim of a number of discriminatory measures of this type and where there is thus a cumulative element involved.[8]

(d) Punishment

56. Persecution must be distinguished from punishment for a common law offence. Persons fleeing from prosecution or punishment for such an offence are not normally refugees. It should be recalled that a refugee is a victim—or potential victim—of injustice, not a fugitive from justice.

57. The above distinction may, however, occasionally be obscured. In the first place, a person guilty of a common law offence may be liable to excessive punishment, which may amount to persecution within the meaning of the definition. Moreover, penal prosecution for a reason mentioned in the definition (for example, in respect of "illegal" religious instruction given to a child) may in itself amount to persecution.

58. Secondly, there may be cases in which a person, besides fearing prosecution or punishment for a common law crime, may also have "well-founded fear of persecution". In such cases the person concerned is a refugee. It may, however, be necessary to consider whether the crime in

[8] See also paragraph 53.

question is not of such a serious character as to bring the applicant within the scope of one of the exclusion clauses.[9]

59. In order to determine whether prosecution amounts to persecution, it will also be necesarry to refer to the laws of the country concerned, for it is possible for a law not to be in conformity with accepted human rights standards. More often, however, it may not be the law but its application that is discriminatory. Prosecution for an offence against "public order", e.g. for distribution of pamphlets, could for example be a vehicle for the persecution of the individual on the grounds of the political content of the publication.

60. In such cases, due to the obvious difficulty involved in evaluating the laws of another country, national authorities may frequently have to take decisions by using their own national legislation as a yardstick. Moreover, recourse may usefully be had to the principles set out in the various international instruments relating to human rights, in particular the International Covenants on Human Rights, which contain binding commitments for the States parties and are instruments to which many States parties to the 1951 Convention have acceded.

(e) Consequences of unlawful departure or unauthorized stay outside country of origin

61. The legislation of certain States imposes severe penalties on nationals who depart from the country in an unlawful manner or remain abroad without authorization. Where there is reason to believe that a person, due to his illegal departure or unauthorized stay abroad is liable to such severe penalties his recognition as a refugee will be justified if it can be shown that his motives for leaving or remaining outside the country are related to the reasons enumerated in Article 1 A (2) of the 1951 Convention (see paragraph 66 below).

(f) Economic migrants distinguished from refugees

62. A migrant is a person who, for reasons other than those contained in the definition, voluntarily leaves his country in order to take up residence elsewhere. He may be moved by the desire for change or adventure, or by family or other reasons of a personal nature. If he is moved exclusively by economic considerations, he is an economic migrant and not a refugee.

63. The distinction between an economic migrant and a refugee is, however, sometimes blurred in the same way as the distinction between economic and political measures in an applicant's country of origin is not always clear. Behind economic measures affecting a person's livelihood there may be racial, religious or political aims or intentions directed against a particular group. Where economic measures destroy the economic existence of a

[9] See paragraphs 144 to 156.

particular section of the population (e.g. withdrawal of trading rights from, or discriminatory or excessive taxation of, a specific ethnic or religious group), the victims may according to the circumstances become refugees on leaving the country.

64. Whether the same would apply to victims of general economic measures (i.e. those that are applied to the whole population without discrimination) would depend on the circumstances of the case. Objections to general economic measures are not by themselves good reasons for claiming refugee status. On the other hand, what appears at first sight to be primarily an economic motive for departure may in reality also involve a political element, and it may be the political opinions of the individual that expose him to serious consequences, rather than his objections to the economic measures themselves.

(g) Agents of persecution

65. Persecution is normally related to action by the authorities of a country. It may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned. A case in point may be religious intolerance, amounting to persecution, in a country otherwise secular, but where sizeable fractions of the population do not respect the religious beliefs of their neighbours. Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection.

(3) *"for reasons of race, religion, nationality, membership of a particular social group or political opinion"*

(a) General analysis

66. In order to be considered a refugee, a person must show well-founded fear of persecution for one of the reasons stated above. It is immaterial whether the persecution arises from any single one of these reasons or from a combination of two or more of them. Often the applicant himself may not be aware of the reasons for the persecution feared. It is not, however, his duty to analyse his case to such an extent as to identify the reasons in detail.

67. It is for the examiner, when investigating the facts of the case, to ascertain the reason or reasons for the persecution feared and to decide whether the definition in the 1951 Convention is met with in this respect. It is evident that the reasons for persecution under these various headings will frequently overlap. Usually there will be more than one element combined in one person, e.g. a political opponent who belongs to a religious or national group, or both, and the combination of such reasons in his person may be relevant in evaluating his well-founded fear.

(b) Race

68. Race, in the present connexion, has to be understood in its widest sense to include all kinds of ethnic groups that are referred to as "races" in common usage. Frequently it will also entail membership of a specific social group of common descent forming a minority within a larger population. Discrimination for reasons of race has found world-wide condemnation as one of the most striking violations of human rights. Racial discrimination, therefore, represents an important element in determining the existence of persecution.

69. Discrimination on racial grounds will frequently amount to persecution in the sense of the 1951 Convention. This will be the case if, as a result of racial discrimination, a person's human dignity is affected to such an extent as to be incompatible with the most elementary and inalienable human rights, or where the disregard of racial barriers is subject to serious consequences.

70. The mere fact of belonging to a certain racial group will normally not be enough to substantiate a claim to refugee status. There may, however, be situations where, due to particular circumstances affecting the group, such membership will in itself be sufficient ground to fear persecution.

(c) Religion

71. The Universal Declaration of Human Rights and the Human Rights Covenant proclaim the right to freedom of thought, conscience and religion, which right includes the freedom of a person to change his religion and his freedom to manifest it in public or private, in teaching, practice, worship and observance.

72. Persecution for "reasons of religion" may assume various forms, e.g. prohibition of membership of a religious community, of worship in private or in public, of religious instruction, or serious measures of discrimination imposed on persons because they practise their religion or belong to a particular religious community.

73. Mere membership of a particular religious community will normally not be enough to substantiate a claim to refugee status. There may, however, be special circumstances where mere membership can be a sufficient ground.

(d) Nationality

74. The term "nationality" in this context is not to be understood only as "citizenship". It refers also to membership of an ethnic or linguistic group and may occasionally overlap with the term "race". Persecution for reasons of nationality may consist of adverse attitudes and measures directed against a national (ethnic, linguistic) minority and in certain circumstances the fact of belonging to such a minority may in itself give rise to well-founded fear of persecution.

75. The co-existence within the boundaries of a State of two or more national (ethnic, linguistic) groups may create situations of conflict and also situations of persecution or danger of persecution. It may not always be easy to distinguish between persecution for reasons of nationality and persecution for reasons of political opinion when a conflict between national groups is combined with political movements, particularly where a political movement is identified with a specific "nationality".

76. Whereas in most cases persecution for reason of nationality is feared by persons belonging to a national minority, there have been many cases in various continents where a person belonging to a majority group may fear persecution by a dominant minority.

(e) Membership of a particular social group

77. A "particular social group" normally comprises persons of similar background, habits or social status. A claim to fear of persecution under this heading may frequently overlap with a claim to fear of persecution on other grounds, i.e. race, religion or nationality.

78. Membership of such a particular social group may be at the root of persecution because there is no confidence in the group's loyalty to the Government or because the political outlook, antecedents or economic activity of its members, or the very existence of the social group as such, is held to be an obstacle to the Government's policies.

79. Mere membership of a particular social group will not normally be enough to substantiate a claim to refugee status. There may, however, be special circumstances where mere membership can be a sufficient ground to fear persecution.

(f) Political opinion

80. Holding political opinions different from those of the Government is not in itself a ground for claiming refugee status, and an applicant must show that he has a fear of persecution for holding such opinions. This presupposes that the applicant holds opinions not tolerated by the authorities, which are critical of their policies or methods. It also presupposes that such opinions have come to the notice of the authorities or are attributed by them to the applicant. The political opinions of a teacher or writer may be more manifest than those of a person in a less exposed position. The relative importance or tenacity of the applicant's opinions—in so far as this can be established from all the circumstances of the case—will also be relevant.

81. While the definition speaks of persecution "for reasons of political opinion" it may not always be possible to establish a causal link between the opinion expressed and the related measures suffered or feared by the applicant. Such measures have only rarely been based expressly on "opinion". More frequently, such measures take the form of sanctions for

alleged criminal acts against the ruling power. It will, therefore, be necessary to establish the applicant's political opinion, which is at the root of his behaviour, and the fact that it has led or may lead to the persecution that he claims to fear.

82. As indicated above, persecution "for reasons of political opinion" implies that an applicant holds an opinion that either has been expressed or has come to the attention of the authorities. There may, however, also be situations in which the applicant has not given any expression to his opinions. Due to the strength of his convictions, however, it may be reasonable to assume that his opinions will sooner or later find expression and that the applicant will, as a result, come into conflict with the authorities. Where this can reasonably be assumed, the applicant can be considered to have fear of persecution for reasons of political opinion.

83. An applicant claiming fear of persecution because of political opinion need not show that the authorities of his country of origin knew of his opinions before he left the country. He may have concealed his political opinion and never have suffered any discrimination or persecution. However, the mere fact of refusing to avail himself of the protection of his Government, or a refusal to return, may disclose the applicant's true state of mind and give rise to fear of persecution. In such circumstances the test of well-founded fear would be based on an assessment of the consequences that an applicant having certain political dispositions would have to face if he returned. This applies particularly to the so-called refugee "sur place".[10]

84. Where a person is subject to prosecution or punishment for a political offence, a distinction may have to be drawn according to whether the prosecution is for political *opinion* or for politically-motivated *acts*. If the prosecution pertains to a punishable act committed out of political motives, and if the anticipated punishment is in conformity with the general law of the country concerned, fear of such prosecution will not in itself make the applicant a refugee.

85. Whether a political offender can also be considered a refugee will depend upon various other factors. Prosecution for an offence may, depending upon the circumstances, be a pretext for punishing the offender for his political opinions or the expression thereof. Again, there may be reason to believe that a political offender would be exposed to excessive or arbitrary punishment for the alleged offence. Such excessive or arbitrary punishment will amount to persecution.

86. In determining whether a political offender can be considered a refugee, regard should also be had to the following elements: personality of the applicant, his political opinion, the motive behind the act, the nature of

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[10] See paragraphs 94 to 96.

the act committed, the nature of the prosecution and its motives; finally, also, the nature of the law on which the prosecution is based. These elements may go to show that the person concerned has a fear of persecution and not merely a fear of prosecution and punishment—within the law— for an act committed by him.

(4) "*is outside the country of his nationality*"

(a) General analysis

87. In this context, "nationality" refers to "citizenship". The phrase "is outside the country of his nationality" relates to persons who have a nationality, as distinct from stateless persons. In the majority of cases, refugees retain the nationality of their country of origin.

88. It is a general requirement for refugee status that an applicant who has a nationality be outside the country of his nationality. There are no exceptions to this rule. International protection cannot come into play as long as a person is within the territorial jurisdiction of his home country.[11]

89. Where, therefore, an applicant alleges fear of persecution in relation to the country of his nationality, it should be established that he does in fact possess the nationality of that country. There may, however, be uncertainty as to whether a person has a nationality. He may not know himself, or he may wrongly claim to have a particular nationality or to be stateless. Where his nationality cannot be clearly established, his refugee status should be determined in a similar manner to that of a stateless person, i.e. instead of the country of his nationality, the country of his former habitual residence will have to be taken into account. (See paragraphs 101 to 105 below.)

90. As mentioned above, an applicant's well-founded fear of persecution must be in relation to the country of his nationality. As long as he has no fear in relation to the country of his nationality, he can be expected to avail himself of that country's protection. He is not in need of international protection and is therefore not a refugee.

91. The fear of being persecuted need not always extend to the *whole* territory of the refugee's country of nationality. Thus in ethnic clashes or in cases of grave disturbances involving civil war conditions, persecution of a specific ethnic or national group may occur in only one part of the country.

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[11] In certain countries, particularly in Latin America, there is a custom of "diplomatic asylum", i.e. granting refuge to political fugitives in foreign embassies. While a person thus sheltered may be considered to be outside his country's *jurisdiction*, he is not outside its territory and cannot therefore be considered under the terms of the 1951 Convention. The former notion of the "extraterritoriality" of embassies has lately been replaced by the term "inviolability" used in the 1961 Vienna Convention on Diplomatic Relations.

In such situations, a person will not be excluded from refugee status merely because he could have sought refuge in another part of the same country, if under all the circumstances it would not have been reasonable to expect him to do so.

92. The situation of persons having more than one nationality is dealt with in paragraphs 106 and 107 below.

93. Nationality may be proved by the possession of a national passport. Possession of such a passport creates a *prima facie* presumption that the holder is a national of the country of issue, unless the passport itself states otherwise. A person holding a passport showing him to be a national of the issuing country, but who claims that he does not possess that country's nationality, must substantiate his claim, for example, by showing that the passport is a so-called "passport of convenience" (an apparently regular national passport that is sometimes issued by a national authority to non-nationals). However, a mere assertion by the holder that the passport was issued to him as a matter of convenience for travel purposes only is not sufficient to rebut the presumption of nationality. In certain cases, it might be possible to obtain information from the authority that issued the passport. If such information cannot be obtained, or cannot be obtained within reasonable time, the examiner will have to decide on the credibility of the applicant's assertion in weighing all other elements of his story.

(b) Refugees "sur place"

94. The requirement that a person must be outside his country to be a refugee does not mean that he must necessarily have left that country illegally, or even that he must have left it on account of well-founded fear. He may have decided to ask for recognition of his refugee status after having already been abroad for some time. A person who was not a refugee when he left his country, but who becomes a refugee at a later date, is called a refugee "*sur place*".

95. A person becomes a refugee "*sur place*" due to circumstances arising in his country of origin during his absence. Diplomats and other officials serving abroad, prisoners of war, students, migrant workers and others have applied for refugee status during their residence abroad and have been recognized as refugees.

96. A person may become a refugee "*sur place*" as a result of his own actions, such as associating with refugees already recognized, or expressing his political views in his country of residence. Whether such actions are sufficient to justify a well-founded fear of persecution must be determined by a careful examination of the circumstances. Regard should be had in particular to whether such actions may have come to the notice of the authorities of the person's country of origin and how they are likely to be viewed by those authorities.

(5) "*and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country*"

97. Unlike the phrase dealt with under (6) below, the present phrase relates to persons who have a nationality. Whether unable or unwilling to avail himself of the protection of his Government, a refugee is always a person who does not enjoy such protection.

98. Being *unable* to avail himself of such protection implies circumstances that are beyond the will of the person concerned. There may, for example, be a state of war, civil war or other grave disturbance, which prevents the country of nationality from extending protection or makes such protection ineffective. Protection by the country of nationality may also have been denied to the applicant. Such denial of protection may confirm or strengthen the applicant's fear of persecution, and may indeed be an element of persecution.

99. What constitutes a refusal of protection must be determined according to the circumstances of the case. If it appears that the applicant has been denied services (e.g., refusal of a national passport or extension of its validity, or denial of admittance to the home territory) normally accorded to his co-nationals, this may constitute a refusal of protection within the definition.

100. The term *unwilling* refers to refugees who refuse to accept the protection of the Government of the country of their nationality.[12] It is qualified by the phrase "owing to such fear". Where a person is willing to avail himself of the protection of his home country, such willingness would normally be incompatible with a claim that he is outside that country "owing to well-founded fear of persecution". Whenever the protection of the country of nationality is available, and there is no ground based on well-founded fear for refusing it, the person concerned is not in need of international protection and is not a refugee.

(6) "*or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it*"

101. This phrase, which relates to stateless refugees, is parallel to the preceding phrase, which concerns refugees who have a nationality. In the case of stateless refugees, the "country of nationality" is replaced by "the country of his former habitual residence", and the expression "unwilling to avail himself of the protection..." is replaced by the words "unwilling to return to it". In the case of a stateless refugee, the question of "availment of protection" of the country of his former habitual residence does not, of

[12] UN Document E/1618, p. 39.

course, arise. Moreover, once a stateless person has abandoned the country of his former habitual residence for the reasons indicated in the definition, he is usually unable to return.

102. It will be noted that not all stateless persons are refugees. They must be outside the country of their former habitual residence for the reasons indicated in the definition. Where these reasons do not exist, the stateless person is not a refugee.

103. Such reasons must be examined in relation to the country of "former habitual residence" in regard to which fear is alleged. This was defined by the drafters of the 1951 Convention as "the country in which he had resided and where he had suffered or fears he would suffer persecution if he returned".[13]

104. A stateless person may have more than one country of former habitual residence, and he may have a fear of persecution in relation to more than one of them. The definition does not require that he satisfies the criteria in relation to all of them.

105. Once a stateless person has been determined a refugee in relation to "the country of his former habitual residence", any further change of country of habitual residence will not affect his refugee status.

(7) *Dual or multiple nationality*

Article 1 A (2), paragraph 2, of the 1951 Convention:

"In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national."

106. This clause, which is largely self-explanatory, is intended to exclude from refugee status all persons with dual or multiple nationality who can avail themselves of the protection of at least one of the countries of which they are nationals. Wherever available, national protection takes precedence over international protection.

107. In examining the case of an applicant with dual or multiple nationality, it is necessary, however, to distinguish between the possession of a nationality in the legal sense and the availability of protection by the country concerned. There will be cases where the applicant has the nationality of a country in regard to which he alleges no fear, but such nationality may be deemed to be ineffective as it does not entail the protection normally granted to nationals. In such circumstances, the possession of the second

[13] *loc. cit.*

nationality would not be inconsistent with refugee status. As a rule, there should have been a request for, and a refusal of, protection before it can be established that a given nationality is ineffective. If there is no explicit refusal of protection, absence of a reply within reasonable time may be considered a refusal.

(8) *Geographical scope*

108. At the time when the 1951 Convention was drafted, there was a desire by a number of States not to assume obligations the extent of which could not be foreseen. This desire led to the inclusion of the 1951 dateline, to which reference has already been made (paragraphs 35 and 36 above). In response to the wish of certain Governments, the 1951 Convention also gave to Contracting States the possibility of limiting their obligations under the Convention to persons who had become refugees as a result of events ocurring in Europe.

109. Accordingly, Article 1 B of the 1951 Convention states that:

> "(1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in Article 1, Section A, shall be understood to mean either
>
> *(a)* "events occurring in Europe before 1 January 1951"; or
>
> *(b)* "events occurring in Europe and elsewhere before 1 January 1951";
>
> and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purposes of its obligations under this Convention.
>
> (2) Any Contracting State which has adopted alternative *(a)* may at any time extend its obligations by adopting alternative *(b)* by means of a notification addressed to the Secretary-General of the United Nations."

110. Of the States parties to the 1951 Convention, at the time of writing 9 still adhere to alternative *(a)*, "events occurring in Europe".[14] While refugees from other parts of the world frequently obtain asylum in some of these countries, they are not normally accorded refugee status under the 1951 Convention.

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[14] See Annex IV.

APPENDIX C

UNITED NATIONS

GENERAL ASSEMBLY

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A/RES/35/124
28 January 1981

Thirty-fifth session
Agenda item 122

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

[on the report of the Special Political Committee (A/35/739)]

35/124. International co-operation to avert new flows of refugees

The General Assembly,

Gravely concerned over the increasing flows of refugees in many parts of the world,

Deeply disturbed by the human suffering affecting millions of men, women and children who flee or are forcibly expelled from their homelands and seek refuge in other countries,

Reaffirming the right of refugees to return to their homes in their homelands,

Commending the United Nations High Commissioner for Refugees for his untiring humanitarian and social efforts,

Commending also all Governments, United Nations organs, the specialized agencies and intergovernmental and non-governmental organizations which have provided aid for their contributions, and stressing the importance of their efforts in this field,

Noting that, in addition to creating individual human misery, flows of refugees can impose great political, economic and social burdens upon the international community as a whole, with particularly dire effects on developing countries with limited resources of their own,

Considering that massive flows of refugees may not only affect the domestic order and stability of receiving States but also jeopardize the stability of entire regions and thus endanger international peace and security,

Conscious of its duty to examine in depth all aspects of the refugee problem

and to study the means and resources provided by the relevant provisions of the Charter of the United Nations in order to maintain international peace and security,

Reaffirming the inviolability of existing international norms and principles governing responsibilities of States, especially regarding the protection of refugees, and reaffirming the framework of competences of international organizations and institutions,

Reaffirming its resolution 2625 (XXV) of 24 October 1970, by which it approved the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

Convinced, therefore, that the United Nations is called upon to consider, in addition to humanitarian and social relief, suitable means to avert new flows of refugees,

1. Strongly condemns all policies and practices of oppressive and racist régimes as well as aggression, alien domination and foreign occupation, which are primarily responsible for the massive flows of refugees throughout the world and which result in inhuman suffering;

2. Invites all Member States to convey to the Secretary-General their comments and suggestions on international co-operation to avert new flows of refugees and to facilitate the return of those refugees who wish to return;

3. Requests the Secretary-General to report to the General Assembly at its thirty-sixth session, for its further examination and thorough study, the views, comments and suggestions expressed by Member States, together with those expressed on the item at its thirty-fifth session, including all additional contributions pertaining to the matter which he may receive from other United Nations organs;

4. Decides to include in the provisional agenda of its thirty-sixth session the item entitled "International co-operation to avert new flows of refugees".

92nd plenary meeting
11 December 1980

1. Takes note of the resolutions and decisions adopted by the Economic and Social Council at its first regular session of 1980 on the subject of narcotic drugs, elaborated on the basis of the report of the Commission on Narcotic Drugs on its sixth special session, and urges all agencies and organizations concerned with the implementation of the resolutions referred to in the preamble and all States and organizations whose assistance has been requested to take the necessary measures so that the contemplated programme for practical and dynamic drug abuse control can be completed and implemented at the earliest possible date;

2. Repeats its appeal to all States which have not yet become parties to the Single Convention on Narcotic Drugs, 1961, the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961, and to the Convention on Psychotropic Substances, 1971, to take the necessary steps to accede to these conventions and thus ensure their universal application;

3. Invites all Governments to collaborate closely with the International Narcotics Control Board, the Division of Narcotic Drugs and the other concerned bodies in the United Nations system, particularly by supplying them with the necessary information so that they may fulfil their tasks both pursuant to the provisions of the narcotics conventions and in accordance with their purposes;

4. Urges all States to take suitable steps to implement Economic and Social Council resolutions 1979/8 of 9 May 1979 and 1980/20 of 30 April 1980 with a view to achieving and maintaining lasting balance between demand and supply of opiates and to avoid the possibility of diversion of licit production to illicit channels;

5. Invites States concerned to take appropriate measures to discourage the powerful economic interests which are propagating a false and deceitful image of drug use with the aim to increase the number of drug abusers and to legalize the abuse;

6. Underlines its appeal to all Governments to increase their financial support for the United Nations Fund for Drug Abuse Control, so that it may forward the enhancement of measures for the reduction of the illicit supply, traffic and demand for narcotic drugs, and calls particularly upon States which require assistance in crop-substitution or law enforcement programmes to present suitable projects to the Fund and other international funding bodies or projects for bilateral development assistance;

7. Underscores the need of producing countries to receive greater assistance from interested Governments and concerned international organizations to facilitate drug abuse control, including crop-substitution policies or law enforcement programmes;

8. Calls upon all States to co-operate in a suitable fashion to prevent the uncontrolled or illicit cultivation, production, export, import, transit and consumption of narcotic drugs or psychotropic substances, and to take suitable measures to prevent the misuse of chemical substances for the production of drugs;

9. Calls upon the Commission on Narcotic Drugs to present, at the next regular session of the Commission, the completed international programme for drug abuse control so that such a comprehensive, co-ordinated global strategy can be translated at the earliest possible date into actions seeking to interdict narcotics trafficking, eradicate the illicit production and demand, educate citizens throughout the world regarding the dangers of drugs and treat and rehabilitate those individuals who have become dependent upon or addicted to drugs;

10. Calls upon the Economic and Social Council to give once more particular attention to these questions at its next regular session;

11. Calls upon the Secretary-General to transmit the present resolution to all Governments.

35/196. Mass exoduses

Date: 15 December 1980 Meeting: 96
Adopted without a vote Report: A/35/741

The General Assembly,

Mindful of its mandate under the Charter of the United Nations to promote and encourage respect for human rights and for fundamental freedoms for all,

Disturbed by the scale and magnitude of the exoduses and displacements of populations involving hundreds of thousands of men, women and children in many regions of the world,

Noting the immense burden imposed on the first host countries and territories which receive the victims of these sudden and massive movements of population,

Bearing in mind the resolutions of the Economic and Social Council concerning international efforts to meet humanitarian needs in emergency situations,

Recalling Commission on Human Rights resolution 30 (XXXVI) of 11 March 1980, 131/ concerning human rights and massive exoduses,

1. Expresses deep concern at the continued incidences of large-scale exoduses and displacements of populations and the resulting hardships and problems for the persons and States concerned;

2. Expresses determination to facilitate solutions to the problems caused by these large-scale movements of population;

3. Endorses the request of the Commission on Human Rights in its resolution 30 (XXXVI);

4. Requests the Commission on Human Rights to examine the report of the Secretary-General to be submitted to it at its next session and, on the basis of that report, to make recommendations for further action;

5. Decides, in light of the consideration given it by the Commission on Human Rights, to consider this question at its thirty-sixth session under the item entitled "Report of the Economic and Social Council".

35/197. Regional, national and local arrangements for the promotion and protection of human rights

Date: 15 December 1980 Meeting: 96
Adopted without a vote Report: A/35/741

The General Assembly,

Recalling its resolution 34/171 of 17 December 1979, in which it reiterated its appeal to States in areas where regional arrangements in the field of human rights do not yet exist to consider agreements with a view to the establishment within their respective regions of suitable regional arrangements for the promotion and protection of human rights,

Recalling also its resolution 34/49 of 23 November 1979 on national institutions for the promotion and protection of human rights,

1. Notes with satisfaction the efforts currently under way within the Organization of African Unity to elaborate an African Charter of Human Rights and to establish an African Commission on Human Rights, and requests the Secretary-General to maintain close co-operation with the Secretary-General of the Organization of African Unity on this matter and to keep the General Assembly and the Commission on Human Rights informed as he deems it appropriate;

2. Welcomes with appreciation the offer made by the Government of Sri Lanka to host a seminar of member States of the Asian region to consider appropriate arrangements for the promotion and protection and human rights in the region;

3. Requests the Secretary-General to make the necessary arrangements, following finalization of the consultations with member States of the Asian region, with a view to holding the above-mentioned seminar at Colombo in 1981 and to inform the General Assembly at its thirty-sixth session of the deliberations of the seminar.

131/ See Official Records of the Economic and Social Council, 1980, Supplement No. 3 (E/1980/13), chap. XXVI, sect. A.